

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Environmental Conservation

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

#### Closed Season for the Harvest and Landing of Lobster from Lobster Conservation Management Area (LMA) 4

**I.D. No.** ENV-08-13-00002-EP

**Filing No.** 146

**Filing Date:** 2013-01-31

**Effective Date:** 2013-01-31

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

**Proposed Action:** Amendment of Part 44 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301, 13-0105 and 13-0329

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

**Specific reasons underlying the finding of necessity:** Adoption of these regulations on an emergency basis are necessary for New York to come into compliance with the Fishery Management Plan (FMP) for American lobster as adopted by the Atlantic States Marine Fisheries Commission (ASMFC), to begin rebuilding the southern New England lobster stock and to avoid potential federal sanctions imposed for lack of compliance with the plan. Each member state of ASMFC is expected to promulgate regulations that comply with FMPs adopted by ASMFC. These regulations are needed to properly manage the State's fisheries. Because of the time needed for the development and review of a proposal for alternative

interpretations of the "most restrictive rule", New York State did not have this rule in place by January 1, 2013, the implementation date set by ASMFC. The department requested this review because the ASMFC Lobster Board's interpretation of the rule adds additional restrictions on New York's lobster harvesters who fish in multiple LMAs. The proposal was reviewed at the Lobster Technical Committee (TC) meeting January 8, 2013. The LMA 4 Lobster Conservation Management Team (LCMT) chose a closed season of February 1 through March 31. This emergency rule making is necessary to adopt the closed season regulations by the start of the LMA 4 closed season, February 1.

**Subject:** Closed season for the harvest and landing of lobster from Lobster Conservation Management Area (LMA) 4.

**Purpose:** To implement ASMFC American Lobster Fishery Management Plan Addendum XVII and remain in compliance with ASMFC.

**Substance of emergency/proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov>):** The substantive change to 6 NYCRR Part 44 is the adoption of regulations implementing a closed fishing season for lobsters in Lobster Management Area (LMA) 4. The new rule is detailed below:

New subdivision 44.1(h) is adopted to read as follows:

(h) Season closure.

(1) The harvest and landing of lobsters from LMA 4 is prohibited from February 1 through March 31.

(2) During the February 1 through March 31 closure, lobster permit holders who use lobster traps or pots will have a two week period to remove lobster pots from the water after the closed season begins. No lobster trap or pot may be in the water from February 15 to March 24, unless the lobster permit holder also holds appropriate license(s) to harvest other species from their traps or pots. Lobster permit holders may set unbaited lobster traps or pots one week prior to the end of the closed season.

(3) Permittees who designate more than one LMA in their lobster permit application shall abide by the closed seasons rules in all designated LMAs, regardless of where they are fishing. Any person who possesses more than one commercial lobster permit shall abide by the closed season rules of the LMAs designated on all of their permits, regardless of where they are fishing. Any permittee who fails to designate an LMA on their application shall abide by all the closed season rules of the LMAs 1, 2, 3, 4, 5, 6, and Outer Cape Cod (OCC). The department shall provide license holders written notice of the current closed season rules of LMAs 1, 2, 3, 4, 5, 6 and OCC annually.

(4) These regulations apply to both commercial and recreational lobstermen. The other significant change to 6 NYCRR Part 44 is the renumbering of the sections of Part 44 to create space for the new rules and make the lobster regulations more consistent with the regulations for horseshoe crabs and crabs.

The renumbering changes are summarized below:

The lobster regulations are currently numbered as sections 44.1 through 44.7. They are renumbered as subdivisions (a) through (g) in the new section 44.1 Lobsters.

Section 44.9 Crabs is renumbered as section 44.2 Crabs.

Section 44.8 Horseshoe crabs is renumbered as section 44.3 Horseshoe crabs

Sections 44.10 through 44.12 are renumbered as sections 44.4 through 44.6.

Additional edits were necessary to correct grammatical, spelling, and technical errors and to maintain numbering consistency within the new sections.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 30, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Kim McKown, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0454, email: [kamckown@gw.dec.state.ny.us](mailto:kamckown@gw.dec.state.ny.us)

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

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

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

#### Regulatory Impact Statement

##### 1. Statutory authority:

Environmental Conservation Law (ECL) sections 3-0301, 13-0105 and 13-0329 authorize the Department of Environmental Conservation (the department) to establish by regulation closed season regulations for Lobster Conservation Management Areas 1, 2, 3, 4, 5, and Outer Cape Cod (OCC) for American lobsters.

##### 2. Legislative objectives:

It is the objective of the above-cited legislation that the department manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

##### 3. Needs and benefits:

Recent stock assessment reports have indicated that the Southern New England (SNE) American lobster population is depleted and recruitment is low. The Atlantic States Marine Fisheries Commission (ASMFC) American Lobster Management Board approved Addendum XVII to Amendment 3 of the American Lobster Fishery Management Plan (FMP) with the objective of decreasing lobster harvest in Southern New England (SNE) by 10 percent as the first step towards stock rebuilding. Lobster Conservation Management Teams (LCMT) met and determined implementation measures. These measures include a closed season for Lobster Conservation Management Area (LMA) 4 (waters off the south shore of Long Island). The LMA 4 Lobster Conservation Management Team (LCMT) chose a closed season of February 1 through March 31.

Because of the time needed for the development and review of a proposal for alternative interpretations of the "most restrictive rule" New York State did not have this rule in place by January 1, 2013, the implementation date set by ASMFC. The department requested this review because the ASMFC Lobster Board's interpretation of the rule adds additional restrictions on New York's lobster harvesters who fish in multiple LMAs. The proposal was reviewed at the Lobster Technical Committee (TC) meeting January 8, 2013. The TC did not approve the alternatives due to their concern that the alternatives could result in increases or shifts in effort which could negatively affect local lobster population rebuilding. The LMA 4 Lobster Conservation Management Team (LCMT) chose a closed season of February 1 through March 31. This emergency rule making is necessary to adopt the closed season regulations by the start of the LMA 4 closed season, February 1.

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

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have implemented provisions of FMPs with which they are required to comply. If ASMFC determines that a state is non-compliant with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

Environmental Conservation Law section 13-0329(16), authorizes the department to adopt regulations for the management of lobster in LMAs 1, 2, 3, 4, 5 and Outer Cape Cod (OCC), provided that such regulations must be consistent with the fishery management plans for lobster adopted by ASMFC.

Failure to adopt rules for LMA 4 could lead to the determination of delayed implementation, and the fishery may be shut down for an equal number of days the following year. It may also result in a determination of non-compliance by ASMFC and the Secretary of Commerce and the imposition of a lobster fishery closure - a complete ban on fishing for lobster in New York. During 2010, New York's 360 resident commercial lobster license holders harvested almost 800,000 pounds of lobsters for a value of approximately \$3.4 million. In addition, there were 1,095 non-commercial lobster license holders. A fishery closure would impact all New York commercial and non-commercial lobster permit holders.

##### 4. Costs:

##### (a) Cost to State government:

There are no new costs to State government resulting from this action.

##### (b) Cost to local government:

There will be no costs to local governments.

##### (c) Cost to private regulated parties:

The proposed rule will impose costs to commercial lobster permit holders who fish in LMA 4. The objective of Addendum XVII is to decrease harvest by 10 percent. We estimate the addendum would cost New York's lobster industry as a whole approximately \$45,000 annually using 2010 lobster harvest data. There will be additional costs to lobster permit holders who fish in both LMA 4 and 6 due to the most restrictive rule.

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

The department will incur costs associated with both the implementation and administration of these rules, including the costs relating to notifying permit holders of the new rules and enforcement of the closed season and most restrictive rules.

##### 5. Local government mandates:

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

##### 6. Paperwork:

None.

##### 7. Duplication:

The proposed amendment does not duplicate any State or Federal requirement.

##### 8. Alternatives:

Alternative measures: Addendum XVII to the Atlantic States Marine Fisheries Commission (ASMFC) American lobster Fishery Management Plan adopted a 10 percent reduction in harvest to help rebuild the depleted Southern New England lobster stock. The addendum recommended size limits and seasonal and area closures as management measures to promote the reduction in lobster harvest. LCMT 4 proposed a closed season as part of the management measures to reduce harvest. Alternative measures would need to be proposed by the Area LCMT and approved by the ASMFC Lobster Management Board.

"Most Restrictive Rule": Alternative interpretations of the "most restrictive rule" where proposed to the ASMFC American Lobster TC. The proposal would have allowed multi-area permit holders some flexibility to fish multiple areas without incurring full multiple season closures. The TC did not approve the alternatives due to their concern that the alternatives could result in increases or shifts in effort which could negatively affect local lobster population rebuilding.

No action: This alternative is rejected because New York State must abide by the ASMFC American Lobster FMP required 10% reduction in harvest, implemented in part by a closed season for LMA 4.

##### 9. Federal standards:

The amendments to Part 44 are in compliance with the ASMFC fishery management plan for American lobster.

##### 10. Compliance schedule:

The regulation must be implemented on February 1, 2013. Regulated parties will be notified of the changes to the regulations by mail, through appropriate news releases and via the department's website and electronic mailing list.

#### Regulatory Flexibility Analysis

##### 1. Effect of rule:

The amendment of 6 NYCRR Part 44 implements a closed season for lobster harvesters in Lobster Conservation Management Area (LMA) 4, as required by the Atlantic States Marine Fisheries Commission (ASMFC). The rule will affect both commercial and non-commercial lobster harvesters. The regulations do not apply directly to local governments, and will not have any direct effects on local governments.

The objective of Addendum XVII to ASMFC American Lobster Fishery Management Plan (FMP) is to reduce harvest of lobster in Southern New England (SNE) by 10 percent to initiate stock rebuilding. Lobster Conservation Management Teams (LCMT) met and determined implementation measures. These measures include a closed season for Lobster Conservation Management Area (LMA) 4 (waters off the south shore of Long Island). Because of the time needed for the development and review of a proposal for alternative interpretations of the "most restrictive rule" New York State did not have this rule in place by January 1, 2013, the implementation date set by ASMFC. The department requested this review because the ASMFC Lobster Board's interpretation of the rule adds additional restrictions on New York's lobster harvesters who fish in multiple LMAs. The proposal was reviewed at the Lobster Technical Committee (TC) meeting January 8, 2013. The TC did not approve the alternatives due to their concern that the alternatives could result in increases or shifts in effort which could negatively affect local lobster population rebuilding. The LMA 4 Lobster Conservation Management Team (LCMT) chose a closed season of February 1 through March 31. This emergency rule making is necessary to adopt the closed season regulations by the start of the LMA 4 closed season, February 1.

In 2010, there were 360 licensed resident commercial lobster fishers in New York; most were self-employed. The objective of Addendum XVII is to decrease harvest by 10 percent. We estimate the addendum would cost New York's lobster harvesters \$45,000 annually using 2010 lobster harvest data. Lobster harvesters who fish in both LMAs 4 and 6 may incur additional costs due to implementation of the most restrictive rule which requires them to observe the closed season rules for both of the LMAs. The regulatory changes also apply to non-commercial harvesters. There were 1,095 non-commercial lobster harvesters in 2010. In 2010, approximately 30 percent of the non-commercial permit holders fished in areas that would be impacted by the rule.

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

2. Compliance requirements:

Lobster harvesters who fish in LMA 4 must observe the February 1 through March 31 season closure. Harvesters have a two week period to remove lobster pots from the water after the closed season begins and they may set un-baited lobster traps or pots one week prior to the end of the closed season. Harvesters who designate multiple LMAs on their permit must abide by the closed season rules for all the LMAs listed on their permit.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule. Lobster industry costs involve the potential loss of harvest due to the closed season (details in section 1). Lobster harvesters who fish in multiple LMAs may incur additional costs due to implementation of the most restrictive rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditures on the part of affected businesses in order to comply with the changes. The changes required by this proposed rule have been determined to be economically feasible for the majority of the affected parties.

There is no additional technology required for small businesses, and this action does not apply to local governments. Therefore, there are no economic or technological impacts for any such bodies.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for the department to become in compliance with the FMP for lobster as soon as possible. The regulations are intended to protect the lobster resource and avoid the adverse impacts that would be associated with closure of the fishery for non-compliance with the FMP.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, as well as wholesale and retail outlets and other support industries. Failure to comply with an FMP and take required actions to protect a marine fishery could hinder the rebuilding of the SNE lobster stock and have an adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being adopted in order to initiate stock rebuilding while allowing for some harvest.

7. Small business and local government participation:

ASMFC had public hearings on Addendum XVII where all resident commercial lobster license holders were invited. In addition, the LMA 4 Lobster Conservation Management Team met to decide on implementation measures for this Addendum.

There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

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

**Rural Area Flexibility Analysis**

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The lobster fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the State. Further, the proposed rule does not impose any reporting, record-keeping,

or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 44, a Rural Area Flexibility Analysis is not required.

**Job Impact Statement**

1. Nature of impact:

The amendment of 6 NYCRR Part 44 will implement the closed season measures of the Atlantic States Marine Fisheries Commission (ASMFC) American Lobster Fishery Management Plan (FMP) Addendum XVII. The objective of this addendum is to reduce the harvest of lobster in Southern New England (SNE) by 10 percent to initiate stock rebuilding. This rule establishes a closed season for lobster harvesters in Lobster Conservation Management Area (LMA) 4 (waters off the south shore of Long Island), as required by the addendum to the FMP. The rule prohibits the harvest and landing of lobsters from LMA 4 from February 1st through March 31st. During the February 1 through March 31 closure, lobster harvesters who use lobster traps or pots will have a two week period to remove lobster pots from the water after the closed season begins and may set un-baited lobster traps or pots one week prior to the end of the closed season. Harvesters who designate multiple LMAs on their permit must abide by the "most restrictive rule" which requires them to abide by the closed season rules for all the LMAs listed on their permit.

Failure by New York to adopt this measure could result in a determination of non-compliance by ASMFC and the Secretary of Commerce and the imposition of a lobster fishery closure - a complete ban on fishing for lobster in New York. These rules will affect both commercial and non-commercial permit holders.

2. Categories and numbers affected:

In 2010, there were 360 licensed resident commercial lobster fishers in New York, most are self-employed. Approximately 100 of these permit holders have trap tag allocations in LMA 4. Less than a dozen of these 2010 lobster permit holders fished in both LMA 4 and 6. These permit holders may incur additional impacts due to implementation of the most restrictive rule which requires them to observe the closed season rules for both of the LMAs. The regulatory changes also apply to non-commercial harvesters. There were 1,095 non-commercial lobster permit holders in 2010. In 2010, approximately 30 percent of the non-commercial permit holders fished in areas that would be impacted by the rule.

3. Regions of adverse impact:

This rule making will impact lobster harvesters fishing in the Marine District of New York in LMA 4 which is located in the near shore Atlantic Ocean off the south shore of Long Island.

4. Minimizing adverse impact:

Should New York fail to adopt this measure, ASMFC may find determination of non-compliance and the Secretary of Commerce may impose a lobster fishery closure for the State of New York. This rule making will prevent this punitive closure of the lobster fishery in New York. If the fishery were to close, it would reduce harvest by 100 percent rather than the 10 percent reduction of the addendum. During 2010, New York's 360 resident commercial lobster license holders harvested almost 800,000 pounds of lobsters for a value of approximately \$3.4 million. In addition, there were 1,095 non-commercial lobster license holders.

Thus, the restrictions minimize the potential for job loss due to a closure of the fishery. In the long-term, the maintenance of sustainable fisheries will have a positive effect on lobster harvesters. Any short-term losses in participation, harvest and sales will be offset by rebuilding of fishery stocks. Protection of the lobster resource is important to the survival of the lobster fishers and the businesses that support in these fisheries.

The department brought a proposal to the ASMFC American Lobster Technical Committee (TC) with alternative interpretations of the "most restrictive rule" to minimize the adverse impact of the application of the "most restrictive rule" to closed seasons. The rule requires that lobster harvesters cease fishing in all LMAs listed on their lobster permit should any LMA listed there be closed. The department's proposals would have allowed multi-area harvesters some flexibility to continue to fish in alternative LMAs when a specific one is closed. The TC did not approve these alternatives due to the concern that these alternatives could result in increases or shifts in effort which could negatively affect local population rebuilding.

5. (IF APPLICABLE) Self-employment opportunities:

The lobster industry as a whole is self-employed.

**NOTICE OF ADOPTION**

**Henderson Shores Unique Area**

**I.D. No.** ENV-46-12-00002-A

**Filing No.** 171

**Filing Date:** 2013-02-04

**Effective Date:** 2013-02-20

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

**Action taken:** Addition of section 190.10(f) to Title 6 NYCRR.  
**Statutory authority:** Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (2)(m), 9-0105(1) and (3)  
**Subject:** Henderson Shores Unique Area.

**Purpose:** To protect public safety and natural resources on the Henderson Shores Unique Area.

**Text or summary was published** in the November 14, 2012 issue of the Register, I.D. No. ENV-46-12-00002-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Keith Rivers, NYS DEC Region 6 Sub-office, 7327 State Route 812, Lowville, NY 13367, (315) 376-3521, email: rwrivers@gw.dec.state.ny.us

**Additional matter required by statute:** A Negative Declaration has been prepared in compliance with Article 8 of the Environmental Conservation Law.

**Initial Review of Rule**

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

**Assessment of Public Comment**

The agency received no public comment.

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

**Bobcat Hunting and Trapping**

**I.D. No.** ENV-08-13-00007-P

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

**Proposed Action:** Amendment of sections 2.20, 6.2 and 6.4 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0901, 11-0903, 11-0905, 11-1101 and 11-1103

**Subject:** Bobcat Hunting and Trapping.

**Purpose:** Make existing bobcat hunting and trapping seasons uniform; establish new bobcat hunting and trapping season in the southern tier.

**Text of proposed rule:** Title 6 of NYCRR, Section 2.20 (entitled “Hunting small game mammals; opossum, weasel, skunk, black, gray and fox squirrels, raccoon, cottontail rabbit, varying hare, European hare, bobcat, red fox, gray fox, and coyote”), Section 6.2 (“Mink, muskrat, raccoon, opossum, weasel, red fox, gray fox, skunk, coyote, fisher, bobcat and pine marten trapping seasons and bag limits”) and Section 6.4 (“Experimental research trapping seasons for bobcat and fisher”) are amended as follows:

Amend existing paragraph 6 NYCRR 2.20(a)(3) to read:  
 (3) Bobcat.

Open season	Wildlife Management Units
October 25th to February 15th	3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 4B, 4C, 4G, 4H, 4J, 4K, 4L, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5A, 5C, 5F, 5G, 5H, 5J, 5S, 5T, 6A, 6C, 6F, 6G, 6H, [6G and] 6J and 6N
October 25th [to December 10th] through the Friday before the start of the Southern Zone regular big game season	[6N] 3R, 3S, 4A, 4F, 4O, 5R, 6R, 6S, 7S, 8T, 8W, 8X, 8Y, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y
Closed	All other WMUs

Renumber existing subdivisions 2.20 (c) through (i) as subdivisions (d) through (j), and add new subdivision 2.20(c) to read:

(c) Bobcat permit.

(1) No person shall hunt bobcat in Wildlife Management Units 3R, 3S, 4A, 4F, 4O, 5R, 6R, 6S, 7S, 8T, 8W, 8X, 8Y, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X or 9Y unless the person holds a revocable special permit for bobcat issued by the department.

(2) Requirements and procedures for obtaining a bobcat permit will be described in the department’s annual hunting and trapping syllabus and on the department’s website.

(3) The holder of a bobcat permit must comply with all conditions stated on the permit.

Amend existing paragraph 6.2(a)(3) to read:  
 (3) Bobcat.

Open season	Wildlife Management Units
[October 25th to December 10th]	[5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J and 6N]
October 25th to February 15th	3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 4B, 4C, 4G, 4H, 4J, 4K, 4L, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5A, 5C, 5F, 5G, 5H, 5J, 5S, [and] 5T, 6A, 6C, 6F, 6G, 6H, 6J and 6N
October 25th through the Friday before the start of the Southern Zone regular big game season	3R, 3S, 4A, 4F, 4O, 5R, 6R, 6S, 7S, 8T, 8W, 8X, 8Y, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y
Closed	All other WMUs

Add new subdivision 6.2(c) to read:

(c) Bobcat permit.

(1) No person shall trap bobcat in Wildlife Management Units 3R, 3S, 4A, 4F, 4O, 5R, 6R, 6S, 7S, 8T, 8W, 8X, 8Y, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X or 9Y unless the person holds a revocable special permit for bobcat issued by the department.

(2) Requirements and procedures for obtaining a bobcat permit will be described in the department’s annual hunting and trapping syllabus and on the department’s website.

(3) The holder of a bobcat permit must comply with all conditions stated on the permit.

Repeal 6 NYCRR Section 6.4 in its entirety.

**Text of proposed rule and any required statements and analyses may be obtained from:** Bryan L. Swift, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8922, email: wildliferegs@gw.dec.state.ny.us

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

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

**Additional matter required by statute:** A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

**Regulatory Impact Statement**

1. Statutory Authority

Section 11-0303 of the Environmental Conservation Law (ECL) authorizes the Department of Environmental Conservation (DEC or department) to provide for the recreational harvest of wildlife giving due consideration to ecological factors, the natural maintenance of wildlife, public safety, and the protection of private property. Sections 11-0901, 11-0903, 11-0905, 11-1101 and 11-1103 of the ECL authorize the department to regulate the taking, possession and disposition of beaver, fisher, otter, bobcat, coyote, fox, raccoon, opossum, weasel, skunk, muskrat, pine marten and mink (“furbearers”).

2. Legislative Objectives

The legislative objective of the statutory provisions listed above is to authorize the department to establish the seasons and methods by which furbearers may be taken by hunting and trapping. Season dates are used to achieve harvest objectives and equitably distribute hunting opportunity among as many hunters and trappers as possible. Regulations governing the manner of taking upgrade the quality of recreational activity, provide for a variety of harvest techniques, afford populations with additional protection if needed, and provide for public safety and protect private property.

3. Needs and Benefits

This rulemaking will implement changes prescribed in the recently adopted Management Plan for Bobcat in New York State, 2012-2017, which can be viewed at: [www.dec.ny.gov/docs/wildlife\\_pdf/finalbmp2012.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/finalbmp2012.pdf). The proposed changes would provide additional, sustainable bobcat harvest opportunities in many areas of the state and standardize hunting and trapping season dates in areas where bobcat harvest opportunities already exist. Additional rationale for the proposed changes is provided below.

Northern New York bobcat seasons:

The department proposes two specific regulatory changes for northern New York: 1) extend the close of bobcat trapping season to February 15th (trapping season currently closes on December 10th) in the Northern Adirondacks, Central Adirondacks, Champlain Valley and Transition, St. Lawrence Valley, and East Ontario Plain; and 2) extend the close of bobcat hunting and trapping seasons to February 15th (both seasons currently close on December 10th) in the Central Tug Hill area. These changes will

result in a uniform bobcat hunting and trapping season throughout much of eastern New York, and provide some additional opportunities for trappers and hunters in northern New York.

Historically, Northern Zone WMUs have had much shorter (7-week) bobcat trapping seasons within a more liberal (16-week) hunting season. These shorter trapping seasons were designed to protect a growing fisher population. Fisher populations have since expanded throughout the Northern Zone (and in many areas of the Southern Zone, as well), and they have been harvested in a sustainable manner for several decades, therefore the shorter bobcat trapping season is no longer necessary.

Total bobcat harvest in northern New York in recent years averaged about 170 animals, with slightly more taken by hunters than by trappers. Extending the seasons to February 15 would provide eight additional weeks of trapping opportunity, but we expect minimal additional harvest to occur because snow, ice and poor road access limit trapper effort and success in the Adirondacks and Tug Hill during the winter months. In addition, the rugged landscape and limited road network in these areas creates refuge areas where bobcats are subject to little trapping pressure. Few trappers can afford the time to maintain trap sets in remote areas of the Adirondacks. We recently extended land trapping seasons for other furbearing species (i.e., fox, coyote, opossum, skunk, raccoon, and weasel) in eight Northern Zone WMUs, from December 10 until February 15, and only 3% of trappers took advantage of this new opportunity. In the Tug Hill area, where the bobcat hunting season would also be extended (to match the rest of northern New York), hunting is limited to those areas located near roads or along snowmobile corridors.

With these considerations, we expect limited additional participation by bobcat trappers and hunters in northern New York, and predict that fewer than 50 additional bobcats will be taken per year with the changes proposed. We do not expect this increase in harvest to significantly affect the abundance of bobcats in the Adirondacks or other areas of northern New York. Nevertheless, the trappers and hunters who participate in this additional opportunity will appreciate having more time afield, providing some modest economic and recreational benefits.

Southern Zone bobcat seasons:

The department proposes to open very conservative bobcat hunting and trapping seasons in portions of the Southern Zone, from October 25th to the Friday before opening day of the regular big game season (the 3rd Saturday in November). Areas that would open under this proposal (referred to as "Harvest Expansion Area") include the West Appalachian Plateau, Central Appalachian Plateau, Otsego-Delaware Hills, Mohawk Valley, and New York City Transition WMU aggregates, and WMU 7S. Bobcat hunting and trapping seasons are currently closed in these areas.

Bobcats historically occurred throughout the Southern Zone and observations reported by trappers, bowhunters, and the general public indicate a robust and increasing population. Over the past five years there have been more than 330 bobcat observations documented in the Harvest Expansion Area. Observations rates in this area are similar to, or exceed, those in the areas currently open in eastern and northern New York.

We propose a very conservative approach to initiating bobcat harvest opportunity in this area, including restrictions on season length and timing. A short season would limit the number of bobcats harvested, while still providing some opportunity for small game hunters and trappers. Season length in the Harvest Expansion Area will be much shorter (3-4 weeks) than in the current harvest area (~16 weeks), where bobcats have been harvested in a sustainable manner for many years. The estimated harvest in this area should be only about 30% of a full season, or less than 100 bobcats across the entire area.

Adding the maximum predicted harvest for the Harvest Expansion Area (100 animals) to the maximum predicted harvest increases in northern New York (up to 50 bobcats) results in a total predicted bobcat harvest averaging about 650 animals statewide. We are confident that this is a sustainable harvest from the estimated population of 5,000+ bobcats statewide. We believe that the conservative seasons to be opened in the Southern Zone will allow for both a limited and sustainable harvest of bobcats, and continued growth of bobcat populations in central and western New York.

With the opening of new hunting and trapping seasons in the Harvest Expansion Area, we will carefully monitor the harvest that occurs through pelt seal data and analysis of harvest and biological data from bobcats taken in that area. Trappers and hunters will be required to obtain a free permit from the department to hunt or trap bobcat in this area to facilitate the collection of data needed to evaluate these new harvest opportunities. The permit will require that trappers and hunters maintain a diary of their bobcat hunting and trapping effort and success, and submit the lower jaw or canine tooth from all harvested bobcat prior to the pelt being sealed. The diary will collect information on hunting and trapping effort (hours hunted and/or trap-nights) by permit holders. Collectively, these measures will enhance our understanding of the status and population trends of bobcats in the Southern Zone.

Finally, we propose elimination of obsolete regulations pertaining to experimental trapping seasons for bobcat and fisher that were held during the 2006-2007 through 2008-2009 seasons. Those seasons are no longer in effect and would be inconsistent with bobcat harvest regulations being proposed at this time.

#### 4. Costs

The proposed revisions to 6 NYCRR will not result in any increased expenditures by State or local governments or the general public, other than the normal administrative costs to DEC associated with notifying hunters and trappers of the changes, issuance of hunting and trapping permits, analysis of collected biological samples, and the costs associated with enforcing new regulations.

#### 5. Paperwork

The proposed revisions would require any hunters and trappers who wish to take advantage of the expanded bobcat harvest opportunities in some areas obtain a free permit from the department, and maintain and submit a diary of their hunting and trapping activity. This is necessary for us to evaluate hunter activity and harvest that occurs in the newly established harvest area.

#### 6. Local Government Mandates

This rulemaking does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district. There are no local governmental mandates associated with this proposal.

#### 7. Duplication

The proposed rulemaking does not duplicate or conflict with any other local, state or federal regulations concerning the taking of furbearing animals.

#### 8. Alternatives

No action. Taking no action would be inconsistent with the recently adopted bobcat management plan and deny licensed trappers and hunters an opportunity for additional sustainable use of the resource. No action would also maintain a relatively complex set of hunting and trapping season dates in the Northern Zone when no justification for these current season dates exists.

Shorter, uniform season dates in the Northern Zone. The department considered shortening bobcat hunting season dates in the Northern Zone and aligning them with the current, shorter trapping season dates to achieve uniformity in season dates. Such a change would not be welcomed by bobcat hunters, particularly those who pursue them with dogs. Bobcat hunters who use dogs traditionally have waited until the later portion of the bobcat hunting season to pursue them to avoid conflicts with deer hunters. Shortening the bobcat hunting season would force these hunters to hunt during the open deer season. In addition, there is no biological information that suggests shortening the bobcat hunting season is necessary. In fact, available data supports increasing opportunities on bobcats in the Northern Zone.

Do not institute new seasons in the Harvest Expansion Area. Not opening additional harvest areas would run counter to criteria developed in the bobcat plan for determining when an area is suitable for sustained harvest and would cause disappointment among hunters and trappers who desire these new opportunities. The observation data that we have collected in these areas strongly suggest a healthy and growing bobcat population that is capable of sustaining harvest. Continuing to have closed seasons in these areas would also hamper the Department's ability to gain a firmer understanding of the dynamics of the bobcat population due to the loss of the harvest, effort, and other biological data that would have been collected as part of these new opportunities.

#### 9. Federal Standards

Currently, bobcats are listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The U.S. Fish and Wildlife Service (USFWS) is responsible for implementing certain treaty obligations, and they do so via their Office of Scientific Authority, and their Office of Management Authority. This listing requires that harvested bobcats or their pelts be affixed with a plastic seal prior to being exported from the United States. DEC has previously adopted regulations to satisfy this sealing requirement and will continue to follow these practices. The proposed amendments do not affect or duplicate this federal standard, and there are no other federal environmental standards or criteria relevant to the subject matter of this rule making.

#### 10. Compliance Schedule

All hunters and trappers who wish to harvest bobcats must comply with this rule making upon its effective date and during all subsequent hunting seasons.

#### *Regulatory Flexibility Analysis*

The purpose of this rule making is to amend bobcat hunting and trapping regulations. This rule will not impose any reporting, record-keeping, or other compliance requirements on small businesses or local government. Therefore, a Regulatory Flexibility Analysis is not required.

All reporting or record-keeping requirements associated with bobcat

hunting and trapping are administered by the New York State Department of Environmental Conservation (department). No reporting or record-keeping requirements are being imposed on small businesses or local governments.

The hunting activity resulting from this rule making will not require any new or additional reporting or record-keeping by any small businesses or local governments. For these reasons, the department has concluded that this rule making does not require a Regulatory Flexibility Analysis.

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

The purpose of this rule making is to amend bobcat hunting and trapping regulations. This rule will not impose any reporting, record-keeping, or other compliance requirements on rural communities. Therefore, a Rural Area Flexibility Analysis is not required.

All reporting or record-keeping requirements associated with bobcat hunting and trapping are administered by the New York State Department of Environmental Conservation (department). No reporting or record-keeping requirements are being imposed on rural areas.

The hunting and trapping activity associated with this rule making does not require any new or additional reporting or record-keeping by entities in rural areas, and no professional services will be needed for people living in rural areas to comply with the proposed rule. Furthermore, this rule making is not expected to have any adverse impacts on any public or private interests in rural areas of New York State. For these reasons, the department has concluded that this rule making does not require a Rural Area Flexibility Analysis.

#### **Job Impact Statement**

The purpose of this rule making is to amend bobcat hunting and trapping regulations. Based on the department's experience in promulgating prior revisions to hunting and trapping regulations, the department has determined that this rule making will not have a substantial adverse impact on jobs and employment opportunities. Few, if any, persons actually hunt or trap as a means of employment. Such a person, for whom hunting and/or trapping is an income source (e.g., professional guide services or sale of furbearer pelts), will not suffer any substantial adverse impact as a result of this proposed rule making because it increases the number of wildlife management units open to bobcat hunting and trapping and could increase the number of participants or the frequency of participation in the bobcat hunting and trapping season.

For these reasons, the department anticipates that this rule making will have no impact on jobs and employment opportunities. Therefore, the department has concluded that a job impact statement is not required.

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## Department of Financial Services

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### EMERGENCY RULE MAKING

#### **Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities**

**I.D. No.** DFS-34-12-00005-E

**Filing No.** 147

**Filing Date:** 2013-02-01

**Effective Date:** 2013-02-01

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

**Action taken:** Addition of Part 225 (Regulation 199) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 2103, 2104, 2110, 2403 and 4525

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

**Specific reasons underlying the finding of necessity:** This Part sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with a life insurance policy or annuity contract. The Part prohibits the use of a senior-specific certification or professional designation by an insurance producer in such a way as to mislead a purchaser or prospective purchaser into thinking that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities.

Seniors are often misled and harmed by the use of senior-specific certifications and designations by insurance producers that imply the exist-

tence of a level of expertise and knowledge in senior matters that in fact does not exist. Misleading certifications and professional designations such as "certified elder planning specialist" and "certified senior advisor" are used by insurance producers to gain the confidence of seniors by creating an impression of expertise and knowledge. However, many of these designations are obtained by insurance producers in a manner that requires little more than the payment of a fee.

In recent years, the media has reported cases of unsuitable sales to elderly clients, resulting in the loss of seniors' savings, by insurance producers utilizing misleading senior-specific certifications or designations. Legislators and regulators, both federal and state, responding to such reports, have proposed and/or adopted prohibitions on the use of senior-specific designations in a misleading manner. In 2008, the National Association of Insurance Commissioners adopted a new Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities ("the NAIC Model"). The standards and procedures in this rule are substantially the same as those already adopted by the NAIC Model. While more than 15 states have implemented some form of the NAIC Model, New York has no statute or regulation that specifically provides this consumer protection by prohibiting the use of misleading senior-specific certifications or professional designations by an insurance producer in the sale of life insurance and annuities.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act") places a high level of importance on state regulation of the appropriate use of certifications and professional designations in the sale of insurance products. In an effort to provide incentives to states to adopt such regulations, the Act offers state agencies that promulgate such regulations federal grants of between \$100,000 and \$600,000 towards enhanced protection of seniors in connection with the sale and marketing of financial products. In order for the Department to be considered for the grants provided under the Dodd-Frank Act, a rule governing the use of senior-specific certifications and designations in the sale of life insurance and annuities, and another governing suitability had to be promulgated by December 31, 2010 and must be maintained in effect. Given the state's fiscal crisis and the constraints on the Department's budget, the federal grant money would fund critical efforts to protect consumers.

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

**Subject:** Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.

**Purpose:** To protect consumers from misleading use of senior-specific certifications and designations in the sale of life insurance or annuities.

**Text of emergency rule:** A new Part 225 is added to read as follows:

*Section 225.0 Purpose.*

*The purpose of this Part is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract.*

*Section 225.1 Applicability.*

*This Part shall apply to any solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract by an insurance producer.*

*Section 225.2 Prohibited uses of senior-specific certifications and professional designations.*

*(a)(1) No insurance producer shall use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or providing services to seniors in connection with the solicitation, sale or purchase of a life insurance policy or annuity contract or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance policy or annuity contract, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance policy or annuity contract.*

*(2) The prohibited use of senior-specific certifications or professional designations includes use of:*

*(i) a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;*

*(ii) a nonexistent or self-conferred certification or professional designation;*

*(iii) a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and*

*(iv) a certification or professional designation that was obtained from a certifying or designating organization that:*

(a) is primarily engaged in the business of instruction in sales or marketing;

(b) does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(c) does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(d) does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

(b) There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subdivision (a)(2)(iv) of this section when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

(1) The American National Standards Institute (ANSI);

(2) The National Commission for Certifying Agencies; or

(3) any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(c) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or providing services to seniors, factors to be considered shall include:

(1) use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) the manner in which those words are combined.

(d)(1) For purposes of this Part, a job title held by an insurance producer within an organization or other entity that is licensed or registered by a state or federal financial services regulatory agency shall not be deemed a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

(i) indicates seniority or standing within the organization or other entity; or

(ii) specifies an individual's area of specialization within the organization or other entity.

(2) For purposes of this subdivision, financial services regulatory agency includes an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

#### Section 225.3 Violations.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law and shall be a violation of section 2403 of the Insurance Law.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-34-12-00005-P, Issue of August 22, 2012. The emergency rule will expire April 1, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Sally Geisel, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

#### Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 2103, 2104, 2403, 2110, and 4525 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 section 301 of the Insurance Law, in material part, authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

Sections 2103 and 2104 of the Insurance Law provide the Superintendent with licensing authority over insurance agents and brokers.

Section 2110 of the Insurance Law authorizes the Superintendent to investigate and discipline those licensees.

Section 2403 of the Insurance Law prohibits any person from engaging

in this state in any trade practice constituting a defined violation or a determined violation as defined in Insurance Law Article 24.

Section 4525 of the Insurance Law specifically subjects fraternal benefit societies to certain provisions of Insurance Law Article 21, as well as to any other section that specifically applies to fraternal benefit societies.

2. Legislative objectives: Various sections of the Insurance Law address advertisements, statements and representations of licensees used in the solicitation of insurance. These sections seek to protect consumers and insurers in New York by establishing prohibitions and uniform standards governing the dissemination of such information to the public. Although this regulation is directed to certain practices involving the sale of life insurance and annuity contracts, many of the provisions of the law pursuant to which this regulation is promulgated apply equally to other kinds of insurers. In addition, certain other Insurance Law provisions and regulations promulgated thereunder may have corresponding applicability to other kinds of insurance. In any case, the focus of this regulation to life insurance and annuity contracts should not be construed to imply that similar prohibitions do not apply to, or that corrective action should not be implemented for, other types of insurers or other kinds of insurance.

Further, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Act") places a high level of importance on state regulation of the appropriate use of certifications and professional designations in the sale of insurance products. To encourage state regulation, the Act offers those state agencies with such regulations in effect federal grants to fund specified regulatory activities that provide enhanced protection of seniors in connection with the sale and marketing of financial products.

This rule sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract. It prohibits the use of a senior-specific certification or professional designation by an insurance producer in such a way as to mislead a purchaser or prospective purchaser into believing that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities.

3. Needs and benefits: Seniors are often misled and harmed by insurance producers' use of senior-specific certifications and designations, which wrongly imply the existence of expertise and knowledge of senior matters. Misleading certifications and professional designations such as "certified elder planning specialist" and "certified senior advisor" are used by insurance producers to gain the confidence of seniors by creating an impression of expertise and knowledge. However, many of these designations are obtained by insurance producers in a manner that requires little more than the payment of a fee.

In recent years, the media has reported cases of unsuitable sales to elderly clients by insurance producers who utilized misleading senior-specific certifications or designations, which resulted in the loss of seniors' savings. Federal and state legislators and regulators, in responding to such reports, have proposed and adopted prohibitions on the misleading use of senior-specific designations. In 2008, the National Association of Insurance Commissioners ("NAIC") adopted a new Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities ("the NAIC Model"). While more than 15 states have implemented some form of the NAIC Model, New York has no statute or regulation that specifically provides a consumer protection that prohibits the misleading use of senior-specific certifications or professional designations by an insurance producer in the sale of life insurance and annuities. In recognition of the need to provide such consumer protection, the Department of Financial Services is adopting the NAIC Model, with minimal modifications, as Part 225 to Title 11 NYCRR (Insurance Regulation 199). The modifications from the NAIC Model conformed terminology and formatting to New York standards as well as added the violations section of the regulation.

4. Costs: Insurance producers should not incur additional costs to comply with this rule. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

The rule does not impose additional costs on the Department of Financial Services or other state government agencies or local governments.

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: The rule does not impose any reporting or recordkeeping requirements on affected insurance producers.

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

8. Alternatives: The Department of Financial Services considered not implementing the NAIC Model and proceeding under the Department's

more general enforcement authority under Insurance Law Article 24. However, because of the misleading and fraudulent marketing practices reported in recent years, the Department determined that a regulation would be the best way to address the situation.

An outreach draft of the regulation was posted on the Department's website on October 5, 2010 for a 14-day comment period. Interested parties, such as the Life Insurance Council of New York (LICONY), a life insurance industry trade association, and the National Association of Insurance and Financial Advisors – New York State (NAIFA- New York State), an agent trade association, supported the adoption of this Part in written comments and/or discussions with the Department of Financial Services.

9. Federal standards: There are no minimum standards imposed by the federal government for the same or similar subject area.

10. Compliance schedule: Insurance producers who currently make appropriate use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract should not need to change their sales practices. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

#### **Regulatory Flexibility Analysis**

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

This rule is substantially the same as the National Association of Insurance Commissioners' ("NAIC") Model regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities and is directed at licensed insurance producers within New York State. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations. The rule does not impose any additional compliance requirements on insurance producers.

2. Local governments: The Department of Financial Services finds that this rule will not impose any adverse compliance requirements or adverse impacts on local governments. The basis for this finding is that this rule is directed at insurance producers, none of which are local governments.

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

1. Types and estimated numbers of rural areas: Insurance producers 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: The rule prohibits the misuse of senior-specific certifications and professional designations by insurance producers in connection with solicitation or sale of, or advice made in connection with, a life insurance policy or annuity contract.

The rule does not impose any reporting, recordkeeping, or professional services requirements on affected insurance producers.

3. Costs: Insurance producers should not incur additional costs to comply with this rule. The acts prohibited by the rule comport with those prohibited directly by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

4. Minimizing adverse impact: This rule should not result in an adverse impact on rural areas.

5. Rural area participation: Affected parties doing business in rural areas of the State had the opportunity to comment on the draft of the rule posted on the Department website during the two-week comment period that commenced on October 5, 2010.

#### **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 sets forth standards to protect consumers from misleading and fraudulent sales practices with respect to the use of senior-specific certifications and professional designations by insurance producers in the solicitation, sale, or purchase of, or advice made in connection with, life insurance policies and annuity contracts.

The Department has no reason to believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

### **NOTICE OF ADOPTION**

#### **Claims for Personal Injury Protection Benefits**

**I.D. No.** DFS-20-12-00009-A

**Filing No.** 141

**Filing Date:** 2013-01-30

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

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

**Action taken:** Amendment of Subpart 65-3 (Regulation 68-C) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 2601 and 5221 and art. 51; and Vehicle and Traffic Law, section 2407

**Subject:** Claims for Personal Injury Protection Benefits.

**Purpose:** To combat no-fault fraud while also accelerating the resolution of no-fault claims.

**Text of final rule:** New subdivisions (o) and (p) are added to section 65-3.5 to read as follows:

(o) *An applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, submit all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. The insurer shall advise the applicant in the verification request that the insurer may deny the claim if the applicant does not provide within 120 calendar days from the date of the initial request either all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. This subdivision shall not apply to a prescribed form (NF-Form) as set forth in Appendix 13 of this Title, medical examination request, or examination under oath request. This subdivision shall apply, with respect to claims for medical services, to any treatment or service rendered on or after April 1, 2013 and with respect to claims for lost earnings and reasonable and necessary expenses, to any accident occurring on or after April 1, 2013.*

(p) *With respect to a verification request and notice, an insurer's non-substantive technical or immaterial defect or omission, as well as an insurer's failure to comply with a prescribed time frame, shall not negate an applicant's obligation to comply with the request or notice. This subdivision shall apply to medical services rendered, and to lost earnings and other reasonable and necessary expenses incurred, on or after April 1, 2013.*

Paragraph (3) of section 65-3.8(b) is amended to read as follows:

(3) *Except as provided in subdivision (e) of this section, an insurer shall not issue a denial of claim form (NYS form N-F 10) prior to its receipt of verification of all of the relevant information requested pursuant to [section] sections 65-3.5 and 65-3.6 of this Subpart (e.g., medical reports, wage verification, etc.). However, an insurer may issue a denial if, more than 120 calendar days after the initial request for verification, the applicant has not submitted all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply, provided that the verification request so advised the applicant as required in section 65-3.5(o) of this Subpart. This subdivision shall not apply to a prescribed form (NF-Form) as set forth in Appendix 13 of this Title, medical examination request, or examination under oath request. This paragraph shall apply, with respect to claims for medical services, to any treatment or service rendered on or after April 1, 2013, and with respect to claims for lost earnings and reasonable and necessary expenses, to any accident occurring on or after April 1, 2013.*

Subdivisions (g) through (j) of section 65-3.8 are relettered subdivisions (i) through (l) and new subdivisions (g) and (h) are added to read as follows:

(g)(1) *Proof of the fact and amount of loss sustained pursuant to Insurance Law section 5106(a) shall not be deemed supplied by an applicant to an insurer and no payment shall be due for such claimed medical services under any circumstances:*

(i) *when the claimed medical services were not provided to an injured party; or*

(ii) *for those claimed medical service fees that exceed the charges permissible pursuant to Insurance Law sections 5108(a) and (b) and the regulations promulgated thereunder for services rendered by medical providers.*

(2) *This subdivision shall apply to medical services rendered on or after April 1, 2013.*

(h) *With respect to a denial of claim (NYS Form N-F 10), an insurer's non-substantive technical or immaterial defect or omission shall not affect the validity of a denial of claim. This subdivision shall apply to medical services rendered, and to lost earnings and other reasonable and necessary expenses incurred, on or after April 1, 2013.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 65-3.5(o), (p), 65-3.8(b)(3), (g) and (h).

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

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

1. **Statutory authority:** Sections 202 and 302 of the Financial Services Law, and §§ 301 and 5221 and Article 51 of the Insurance Law. Insurance

Law § 301 and Financial Services Law §§ 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law. Insurance Law § 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation ("MVAIC") with regard to the payment of no-fault benefits to qualified persons. Article 51 of the Insurance Law governs the no-fault insurance system.

2. Legislative objectives: Article 51 of the Insurance Law is popularly referred to as the "no-fault law." No-fault insurance was introduced to rectify problems that were inherent in the existing tort system used to settle claims and to provide for prompt payment of health care and loss of earnings benefits.

3. Needs and benefits: The current regulation: (1) imposes no deadline for responding to a verification request nor permits an insurer to deny a claim if it never receives the requested verification, allowing some claims to remain open indefinitely; (2) does not address how a verification request, notice (such as a request for a medical examination or examination under oath), or denial of claim should be treated when the document contains an immaterial defect or omission, resulting in unnecessary legal actions and arbitrations; and (3) provides no express remedy to insurers when applicants for benefits – typically health service providers – bill in excess of the mandated compensation fee schedule or for services not even rendered, resulting in determinations by courts and arbitrators that insurers are precluded from raising as a defense to an untimely denial of claim that the provider has over-billed or billed for phantom services, leading to an unjust reduction in an injured party's benefits.

To combat these problems, the proposed rule will: (1) reduce the number of claims that remain open indefinitely by requiring an applicant for benefits to either submit any requested verification within the applicant's control or possession, or provide reasonable justification for failing to do so within 120 calendar days from the date of the initial verification request; (2) reduce litigation and arbitration by providing that a technical defect in an insurer's verification request, notice, or claim denial does not discharge the recipient's obligation to comply with the request or notice or invalidate an otherwise proper claim denial; and (3) prevent an injured person's policy limit from being unjustly depleted by providing that no payment is due for services to the extent the charges exceed the applicable fee schedules or where the services for which payment is requested were not rendered.

4. Costs: This rule does not impose compliance costs on state or local governments who are self-insurers or insurers because the rule only requires that they notify applicants of the new timeframe for responding to verification requests and that failure to do so may result in the denial of claims, all of which would be included in the verification request already being created. Moreover, the rule, which insurers have requested, should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, as well as for New York consumers in the form of reduced automobile insurance premiums.

Applicants, typically health service providers not regulated by the Department, may incur additional costs for now being required to submit reasonable justification for failing to respond to verification requests. Their participation in the no-fault system, however, is optional and the Department has established no preauthorization or reporting requirements with respect to applicants. Further, because the Department does not maintain records of either the number of applicants licensed in this state or the number of applicants actually providing services to injured persons eligible for no-fault benefits, it cannot provide the number of these entities that will be affected by this rule. Notwithstanding, this rule only establishes a timeline for an action that is mandated in the current regulation, in an effort to expeditiously resolve or bring finality to no-fault claims that under the current regulation may be pending indefinitely.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district. However, local governments who are self-insurers must notify policyholders in the verification requests of the new timeframe requirement and that failure to adhere to the requirement may result in a denial of the claim, clearly define reasonableness standards to their claims staff, and implement expedited internal review procedures for affected claims to ensure they are consistent and fair to all applicants for no-fault benefits.

6. Paperwork: This rule does not impose any additional paperwork on insurers or self-insurers. The rule only sets a timeframe for an applicant to submit paperwork that the current regulation requires to be produced, and requires an insurer to notify the applicant of the new timeframe in the same verification request that is being sent. This rule will entail additional paperwork for applicants who need to provide additional justification for non-compliance. However, the timeframe will result in the more expeditious resolution of claims and a decrease in the number of fraudulent claims being submitted for payment.

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

8. Alternatives: The Superintendent carefully evaluated written submissions from various stakeholders in response to prior working drafts posted on the Department's website. Listed below by topic is a summary of alternatives to the present version that the Superintendent considered.

**Time Limit for Responding To Verification Requests and Denial for Untimely Response**

The current regulation does not set forth a time limit to respond to a verification request, and an insurer may not deny a claim until it receives the requested verification. As a result, claims may be pending indefinitely.

One insurer proposed a timeframe of 90 days from the date of the initial request to respond to verification requests. Attorneys who represent applicants for benefits generally proposed a timeframe of 180 days from the date of the initial request to respond to verification requests, and only with respect to information within the possession or control of the applicant. They further proposed revising the regulation to prohibit insurers from issuing a denial when the applicant for benefits has provided "reasonable justification" for failure to comply with the 180-day timeframe. Insurers generally do not support the restriction whereby a denial may not be issued if the outstanding verification was requested from a third party and not from the applicant.

In an effort to strike a balance between opposing views regarding verification requests, the proposed amendment adds a new provision – 11 NYCRR § 65-3.5(o) – to require that an applicant for benefits either submit the verification within the applicant's possession or control or provide reasonable justification for the failure to comply within 120 calendar days from the date of the initial verification request. Also, the proposal amends 11 NYCRR § 65-3.8(b)(3) to permit an insurer to deny a claim when an applicant has not submitted the verification requested pursuant to 11 NYCRR §§ 65-3.5 and 65-3.6 after 120 days. These provisions do not apply to prescribed forms (NF-Forms) as set forth in Appendix 13 of this Title, medical examination requests, and examination under oath requests. The rule also will require an insurer to notify the applicant, in the verification request, of the deadline within which to respond to the request and that the claim may be denied for failing to respond.

**Preventing Billing in Excess of Mandated Fee Schedule or for Services Not Rendered**

Based on case law, two central issues have arisen in situations where an applicant for benefits bills for services in excess of the mandated fee schedule or for services that were never provided. In both instances, courts have ruled that an insurer that fails to timely deny a claim is precluded from asserting as a defense the fact that the provider overbilled or fraudulently billed for services never rendered. As a result, consumers have their benefits unjustly reduced.

Insurers support the Superintendent's attempt to remedy instances when services are overcharged or not provided, and several also believe such a remedy should extend to other reasons for denial of claim.

Attorneys representing applicants for benefits do not object to the Superintendent's attempt to remedy overcharges and phantom billing, but some are concerned that the draft amendment would result in the denial of a claim in its entirety when the applicant has billed in excess of the mandated fee schedule, not just to the extent of the excess.

In order to protect consumers from unjust depletion of benefits, the proposed amendment provides that proof of the fact and amount of loss sustained shall not be deemed to be received by an insurer when the applicant for benefits has billed in excess of the mandated fee schedule and/or for services not rendered. This provision will protect consumers from these fraudulent or abusive practices. Additionally, to absolve the fears of plaintiff attorneys, only the excess portion of an excessive bill is not due, not the entire bill.

**Keeping Immaterial Defects in Notices, Verification Requests and Denials from Invalidating Them**

Insurers expressed concerns that the current regulation does not address how a verification request, notice, or denial of claim should be treated when the document contains an immaterial defect or omission.

To address these concerns, the proposed amendment makes clear that an applicant's obligation to comply with a notice or verification request is not negated and a denial of claim is not invalidated due to a non-substantive technical or immaterial defect contained in any of these documents.

9. Federal standards: There are no minimum federal standards for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: The amendment will take effect on April 1, 2013.

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

The Department of Financial Services (the "Department") is making a non-substantive change to section 65-3.5 in order to provide the effective date of the proposed rule. In response to a public comment received, the Department also has made a non-substantive change to section 65-3.8(g)

in order to clarify that the rule applies to services for which there is no established fee schedule or where services are rendered by an out-of-state medical provider. Because these changes have no effect on the last published Regulatory Flexibility Analysis for Small Businesses and Local Governments, it is not necessary to revise the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments.

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

The Department of Financial Services (the "Department") is making a non-substantive change to section 65-3.5 in order to provide the effective date of the proposed rule. In response to a public comment received, the Department also has made a non-substantive change to section 65-3.8(g) in order to clarify that the rule applies to services for which there is no established fee schedule or where services are rendered by an out-of-state medical provider. Because these changes have no effect on the last published Rural Area Flexibility Analysis, it is not necessary to revise the previously published Rural Area Flexibility Analysis.

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

The Department of Financial Services (the "Department") is making a non-substantive change to section 65-3.5 in order to provide the effective date of the proposed rule. In response to a public comment received, the Department also has made a non-substantive change to section 65-3.8(g) in order to clarify that the rule applies to services for which there is no established fee schedule or where services are rendered by an out-of-state medical provider. Because these changes have no effect on the last published Job Impact Statement, it is not necessary to revise the previously published Job Impact Statement.

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

The Department of Financial Services (the "Department") received 37 comments in response to its publication of the proposed rule in the New York State Register. The Department received comments from the following entities:

- Property/casualty insurers;
- Health service providers;
- Consumers;
- Trade associations comprised of New York State automobile insurers;
- An association comprised of insurance producers in New York State;
- A coalition comprised of consumer groups, insurers and government organizations;
- A coalition of plaintiffs' attorneys, medical professionals and other interested parties;
- A coalition of attorneys representing injured parties in the no-fault process;
- A chiropractic association;
- A law firm that provides legal services to various providers;
- A law firm that provides legal services to various insurers; and
- A member of the New York State Assembly.

Many of the comments pertained to section 65-3.5(o) and (p), which prescribes a 120-day deadline for responding to verification requests. The Department also received comments on section 65-3.8, which permits an insurer to deny a claim if an applicant fails to comply with a verification request within the 120-day deadline or provide reasonable justification for failing to comply. A complete assessment of the public comments that the Department received regarding the proposed rule is posted on the Department's website.

### **NOTICE OF ADOPTION**

#### **Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities**

**I.D. No.** DFS-34-12-00005-A

**Filing No.** 145

**Filing Date:** 2013-01-31

**Effective Date:** 2013-02-20

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

**Action taken:** Addition of Part 225 (Regulation 199) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 201 and 302; and Insurance Law, sections 301, 2103, 2104, 2110, 2403 and 4525

**Subject:** Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.

**Purpose:** To protect consumers from misleading use of senior-specific certifications and designations in the sale of life insurance.

**Text or summary was published** in the August 22, 2012 issue of the Register, I.D. No. DFS-34-12-00005-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Ruth Gumaer, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-4763, email: ruth.gumaer@dfs.ny.gov

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

The purpose of the proposed addition of a new Part 225 to 11 NYCRR (Regulation 199) is to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in connection with the solicitation of, sale or purchase of, or giving of advice regarding, a life insurance policy or annuity contract. The regulation prohibits the use of a senior-specific certification or professional designation by an insurance producer in a manner that would mislead a purchaser or prospective purchaser into thinking that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities. In 2008, the National Association of Insurance Commissioners adopted a new Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities ("the NAIC Model"). The standards and procedures in this rule are substantially the same as those already set forth in the NAIC Model. While more than 15 states have implemented some form of the NAIC Model, New York has no statute or regulation that specifically provides this consumer protection by prohibiting the use of misleading senior-specific certifications or professional designations by an insurance producer in the sale of life insurance and annuities.

The Department received one comment during the public comment period, sent by the National Association of Fixed Annuities ("NAFA"), which approved of the proposed regulation. NAFA is "a national trade association dedicated exclusively to promoting the awareness and understanding of fixed annuities and educating regulators, legislators, consumers, members of the media, industry personnel, and distributors about fixed annuities and their benefits to retirees and those planning retirement," with a "membership of fixed annuity carriers and independent marketing organizations (or field organizations) represent[ing] over 200,000 agents and registered representatives selling fixed annuities."

NAFA commented that it is "pleased that consumer complaints related to annuities have declined significantly over the past four years due in part to the enhanced suitability standards established by the NAIC Suitability in Annuity Transactions Model Regulation (revised in 2010) and the more rigorous oversight on the use of senior-specific designations established by the NAIC's 2008 Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities." NAFA noted in its comments that NAIC Complaint Data through August 2012 shows that complaints of misrepresentation and unsuitable sales declined approximately 80% between 2008 and 2011.

The NAIC Model Regulation, upon which this proposal is based, has brought forth significant improvements in the marketing and sales of annuities. Thus, this regulation is being adopted as proposed.

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

#### **Multiple Parts of Titles 3 and 11 of NYCRR**

**I.D. No.** DFS-08-13-00001-P

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

**Proposed Action:** This is a consensus rule making to amend multiple Parts of Title 3 NYCRR and multiple Parts of Title 11 NYCRR; repeal of Appendices 10A, 10B, 10C, 11, 13-A, 15, 16 and 22, Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; addition of new Appendices 10A, 10B, 10C, 11, 16 and 22, Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13 to Title 11 NYCRR.

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

**Subject:** Multiple Parts of Titles 3 and 11 of NYCRR.

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

**Substance of proposed rule:** Consolidated Summary of the Amendment of Multiple Parts of 3 NYCRR and 11 NYCRR; Repeal of Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; Repeal of Appendices 10A, 10B, 10C, 11, 13-A, 15, 16 and 22; Addition of New Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; and Addition of New Appendices 10A, 10B, 10C, 11, 16 and 22

This rulemaking revises references that are now outdated as a result of the consolidation of the New York State Insurance and Banking Departments into a new Department of Financial Services, and makes certain other technical changes (e.g., grammatical corrections and repeal of obsolete forms).

**Text of proposed rule and any required statements and analyses may be obtained from:** Sally Geisel, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@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.

**Consensus Rule Making Determination**

Statement that the Consolidated Action Amending Multiple Parts of 3 NYCRR and 11 NYCRR; Repealing Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; Repealing Appendices 10A, 10B, 10C, 11, 13-A, 15, 16 and 22; Adding New Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; and Adding New Appendices 10A, 10B, 10C, 11, 16 and 22 Is a Consensus Rulemaking and That No Person Is Likely to Object to Its Adoption

This rulemaking revises references that are now outdated as a result of the consolidation of the New York State Insurance and Banking Departments into a new Department of Financial Services, and makes certain other technical changes (e.g., grammatical corrections and repeal of obsolete forms).

This rulemaking is determined by the agency to be a consensus rulemaking, as defined in State Administrative Procedure Act § 102(11) (“SAPA”), and is proposed pursuant to subparagraph (i) of paragraph (b) of subdivision one of section two hundred two of SAPA. Accordingly, it is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments or a Rural Area Flexibility Analysis.

**Job Impact Statement**

Consolidated Job Impact Statement for the Amendment of Multiple Parts of 3 NYCRR and 11 NYCRR; Repeal of Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; Repeal of Appendices 10A, 10B, 10C, 11, 13-A, 15, 16 and 22; Addition of New Forms NF 1A, NF 1B, NF 4 and NF 5 of Appendix 13; and Addition of New Appendices 10A, 10B, 10C, 11, 16 and 22

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

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

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

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## Office for People with Developmental Disabilities

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

**Conforming Amendments to Chapter 498 of the Laws of 2012**

**I.D. No.** PDD-08-13-00008-P

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

**Proposed Action:** This is a consensus rule making to amend section 624.8(c)(3) of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.09(b) and 33.25

**Subject:** Conforming amendments to chapter 498 of the Laws of 2012.

**Purpose:** Extends the deadline for requests for release of records pertaining to allegations of abuse.

**Text of proposed rule:** Paragraph 624.8(c)(3) is amended as follows:

(3) Agencies are required to release records and documents pertaining to allegations of abuse which occurred or were discovered on or after January 1, 2003 but prior to May 5, 2007, if the written request is submitted on or before December 31, [2012] 2015.

**Text of proposed rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

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

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

**Additional matter required by statute:** Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

**Consensus Rule Making Determination**

In conformance with Jonathan’s Law, existing OPWDD regulations require the release of records pertaining to allegations of abuse in specified circumstances. A provision of the existing regulations requires the release of records for allegations which occurred or were discovered on or after January 1, 2003 but prior to May 5, 2007, if the written request is submitted on or before the deadline of December 31, 2012.

Chapter 498 of the Laws of 2012 extended this deadline to December 31, 2015. OPWDD is proposing revisions to regulations that incorporate this change of deadline.

OPWDD has determined that due to the nature and purpose of the amendment no person is likely to object to the rule as written.

**Job Impact Statement**

A Job Impact Statement for this amendment is not submitted because it is apparent from the nature and purposes of the amendment that it will not have an adverse impact on jobs and/or employment opportunities. It is anticipated that providers will generally utilize existing staff to accomplish any tasks related to this amendment.

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## Public Service Commission

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

**Reliability Contingency Plans to Address the Potential Retirement of the Indian Point Energy Center**

**I.D. No.** PSC-08-13-00009-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, a filing made by Consolidated Edison Company of New York, Inc. and the New York Power Authority on February 1, 2013, concerning reliability contingency plans.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(b) and (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

**Subject:** Reliability contingency plans to address the potential retirement of the Indian Point Energy Center.

**Purpose:** To establish reliability contingency plans for the potential retirement of the Indian Point Energy Center.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering portions of a filing made by Consolidated Edison Company of New York, Inc. and the New York Power Authority on February 1, 2013, concerning reliability contingency plans to address the potential retirement of the Indian Point Energy Center (Filing). The Commission is considering whether to adopt, modify, or reject, in whole or in part, the aspects of the Filing identified as items 2(a) through 2(e) on pages 3 to 4, as discussed at those pages and elsewhere in the Filing.

**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) 474-6530, email: Secretary@dps.ny.gov

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

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**  
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(12-E-0503SP1)

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

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

**I.D. No.** PSC-08-13-00010-P

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

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

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

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

**Purpose:** To reallocate unencumbered 2012 Customer-Sited Tier funds.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, the January 30, 2013 request of the New York State Energy Research and Development Authority (NYSERDA) to reallocate unencumbered funds previously approved for the 2012 Customer-Sited Tier (CST) of the Renewable Portfolio Standard (RPS). Specifically, NYSEDA requests that: (i) the entire balance of unencumbered 2012 Anaerobic Digester Gas to Electricity (ADG) program funds be allocated to the 2013 ADG program; (ii) a portion of the unencumbered 2012 funds for the Fuel Cell and On-Site Wind programs be reallocated to those technologies for 2013; and (iii) the remaining unencumbered funds be allocated to the Solar Photovoltaic program.

**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.  
(03-E-0188SP37)

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

**To Consider the Company's Petition to Extend the Completion of the Five Year Inspection Cycle to June 30, 2015**

**I.D. No.** PSC-08-13-00011-P

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

**Proposed Action:** The Commission is considering whether to grant, deny or modify the petition of Consolidated Edison of New York, Inc. seeking an extension of time to complete inspections of its electric facilities as required by the Electric Safety Standard Order.

**Statutory authority:** Public Service Law, sections 2, 5, 65 and 66

**Subject:** To consider the Company's petition to extend the completion of the five year inspection cycle to June 30, 2015.

**Purpose:** To consider the Company's petition to extend the completion of the five year inspection cycle to June 30, 2015.

**Substance of proposed rule:** Consolidated Edison Company of New York, Inc. (Con Edison or the Company) filed a petition seeking an extension of time to complete the five year inspection cycle of its electric facilities as

required by the Electric Safety Standard Order in Case 04-M-0159. The Commission will consider, among the issues associated with Con Edison's electric safety and reliability performance, whether to grant, deny or modify, in whole or in part, the Company's request to extend the completion date for the current five year inspection cycle by June 30, 2015.

**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.  
(04-M-0159SP8)

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

**Filing Requirements for Certain Article VII Electric Facilities**

**I.D. No.** PSC-08-13-00012-P

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

**Proposed Action:** The Commission is considering whether to approve, reject, or modify (in whole or in part) proposed application filing requirements for facilities in the Mohawk Valley, Capital Region, and Lower Hudson Valley.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 122(1)

**Subject:** Filing requirements for certain Article VII electric facilities.

**Purpose:** To ensure that applications for certain electric transmission facilities contain pertinent information.

**Substance of proposed rule:** The Staff of the Department of Public Service is proposing a rule to specify limited waivers and modifications to the regulations implementing Article VII of the Public Service Law. These proposals will be applied in the review of the applications proposing alternative current (AC) transmission facilities that will increase transfer capacity through the transmission corridor that includes the Central East and UPNY/SENY interfaces and meet the objectives of the Energy Highway Task Force Blueprint, so long as such facilities were described in proposals submitted to the Commission on or before January 25, 2013. The primary goal of this rule is to ensure that any such application contains pertinent information to assist the Commission to decide, in an expeditious manner, whether to grant a Certificate of Environmental Compatibility and Public Need.

The rule being proposed would streamline the certification process by (1) avoiding the need for future applicants to seek case-specific routine waivers, and (2) clarifying certain information requirements in the existing regulations. A copy of Staff's proposed rule can be accessed on the Department's Web site at: [www.dps.ny.gov](http://www.dps.ny.gov), by searching Case 12-T-0502.

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

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

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

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

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

(12-T-0502SP1)

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

**Service Class No. 10 (SC)****I.D. No.** PSC-08-13-00013-P

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

**Proposed Action:** The Public Service Commission is considering a tariff filing by Massena Electric Department, to add a new Service Class (SC No. 10) to its P.S.C. No. 1 - Electricity, to become effective May 1, 2013.

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

**Subject:** Service Class No. 10 (SC).

**Purpose:** To add a new Service Class (SC No. 10).

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Massena Electric Department, requesting approval to add a new Service Classification (SC No. 10) to P.S.C. No. 1 - Electricity. This Service Classification will ensure that the rates of other customers do not increase as a result of service to a new customer. The proposed filing has an effective date of May 1, 2013. 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-E-0041SP1)

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

**Uniform System of Accounts—Request for Accounting Authorization**

**I.D. No.** PSC-08-13-00014-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of New York American Water Company, Inc. to defer approximately \$467,000 of incremental operating expense related to Hurricane Sandy.

**Statutory authority:** Public Service Law, section 89-c(10)

**Subject:** Uniform System of Accounts—Request for Accounting Authorization.

**Purpose:** To allow the company to defer an item of expense or capital beyond the end of the year in which it was incurred.

**Substance of proposed rule:** The Commission is considering whether to approve or reject in whole or in part or modify a request sought in a petition filed by New York American Water Company, Inc. for permission to defer and recover approximately \$467,000 of incremental operating costs and the related carrying charges associated with Hurricane Sandy that occurred in October 2012. The Commission may take other actions related to the petition and may apply its decision here to other utilities.

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

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

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

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

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

(13-W-0036SP1)

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

**Minor Gas Rate Filing****I.D. No.** PSC-08-13-00015-P

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

**Proposed Action:** The Public Service Commission is considering a tariff filing by Fillmore Gas Company, Inc., requesting approval to increase its annual gas revenues by approximately \$300,000 or 27.9% in P.S.C. No. 1—Gas, to become effective June 1, 2013.

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

**Subject:** Minor gas rate filing.

**Purpose:** To approve an increase in annual gas revenues by approximately \$300,000 or 27.9%.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Fillmore Gas Company, Inc., requesting approval to increase its annual gas revenues by approximately \$300,000 or 27.9% to P.S.C. No. 1 - Gas. The proposed filing has an effective date of June 1, 2013. 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-G-0039SP1)

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

**To Adopt Amendments to 16 NYCRR Parts 10 and 255 to Reflect Current Federal Regulations and Certain Housekeeping Changes**

**I.D. No.** PSC-08-13-00016-P

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

**Proposed Action:** This is a consensus rule making to amend Parts 10 and 255 of Title 16 NYCRR.

**Statutory authority:** Public Service Law, sections 4(1), 66(1), 64, 65, 71, 72, 72-a, 75, 79 and 210

**Subject:** To adopt amendments to 16 NYCRR Parts 10 and 255 to reflect current Federal regulations and certain housekeeping changes.

**Purpose:** To adopt amendments to 16 NYCRR Parts 10 and 255 to reflect current Federal regulations and certain housekeeping changes.

**Text of proposed rule:** Case 12-G-0005 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, Chapter I, Rules of Procedure, Subchapter A, General, Part 10, Referenced

Material and Chapter III, Gas Utilities, Subchapter C, Safety, Part 255, Transmission and Distribution of Gas.

At a Session of the Public Service Commission held in the City of \_\_\_\_\_, the Commission, by vote of its members present

RESOLVED:

1. That the provisions of Section 202(1) of the State Administrative Procedure Act and Section 101-a (2) of the Executive Law having been complied with, Title 16 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, effective upon publication of a Notice of Adoption in the State Register, by revising Chapter I, Rules of Procedure, Subchapter A, General, Part 10, Referenced Material, Sections 10.2 and 10.3; and revising Chapter III, Gas Utilities, Subchapter C, Safety, Part 255, Transmission and Distribution of Gas; by amending Sections 255.3, 255.65, 255.125, 255.143, 255.145, 255.191, 255.283, 255.383, 255.465, 255.631, 255.711, 255.945, and 255.951 to read as follows (underscoring indicates new material, brackets indicate deletions):

SUBCHAPTER A, General

PART 10

REFERENCED MATERIAL

§ 10.2 Federal Regulations.

(4) 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (Revised as of October 1, 20[09]11).

§ 10.3 Other Information.

(c) The standards referred to in this subdivision are published by and available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005. They are available for inspection and copying at the Public Service Commission's Office, Empire State Plaza, Building 3, Albany, NY 12223 1350. The standards referenced in this Title are:

[(1) API Specification 6D/ISO 14313, Specification for Pipeline Valves (23rd edition and errata 1, 2 and 3, [2009];

(2) API Specification 5L/ISO 3183, Specification for Line Pipe (44th edition, 2007), Includes Errata and Addendum (2009);

(3) API Standard 1104, Welding of Pipelines and Related Facilities; (20th edition, Errata/Addendum, [2007] and Errata 2 [2008];

(4) API Recommended Practice 5L1, Recommended Practice for Railroad Transportation of Line Pipe, (6th edition, 2002);

(5) API Recommended Practice 1162 Public Awareness Programs for Pipeline Operators, First edition (December 2003); and

(6) API Recommended Practice 1165, Recommended Practice for Pipeline SCADA Displays, (API RP 1165) (1st edition, January 2007).]

(1) *API Specification 5L/ISO 3183, "Specification for Line Pipe" (44th edition, 2007), Includes Errata (January 2009) and Addendum (February 2009);*

(2) *API Recommended Practice 5L1, "Recommended Practice for Railroad Transportation of Line Pipe," (6th edition, 2002);*

(3) *API Recommended Practice 5LW, "Transportation of Line Pipe on Barges and Marine Vessels" (2nd edition, December 1996, effective March 1, 1997);*

(4) *API Specification 6D/ISO 14313, Specification for Pipeline Valves (23rd edition and errata 1, 2 and 3, [2009];*

(5) *Reserved;*

(6) *API Standard 1104, "Welding of Pipelines and Related Facilities" (20th edition, October 2005, errata/addendum, (July 2007) and errata 2 (2008))*

(7) *API Recommended Practice 1162 "Public Awareness Programs for Pipeline Operators," (First edition (December 2003)); and*

(8) *API Recommended Practice 1165, Recommended Practice for Pipeline SCADA Displays, (API RP 1165) (1st edition, January 2007).*

(k) The standards referred to in this subdivision are published by and available from the Plastics Pipe Institute, Inc. (PPI), 1825 Connecticut Avenue, NW, Suite 680, Washington, DC 20009. They are available for inspection and copying at the Public Service Commission's Office, Empire State Plaza, Building 3, Albany, NY 12223-1350. The regulations referenced in this Title are:

(1) PPI TR-3/200[0]8 "Policies and Procedures for Developing Hydrostatic Design Bases (HDB), Pressure Design Bases (PDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials" Part E only, "Policy for Determining Long Term Strength (LTHS) by Temperature Interpolation)". ([2000]2008 edition)

SUBCHAPTER C, Safety

PART 255

TRANSMISSION AND DISTRIBUTION OF GAS

§ 255.3 Definitions.

(a) As used in this Part:

(44) Department. For this Part, Department shall mean the Department of Public Service, Office of Electric, Gas and Water, Safety Section, or its successor, 3 Empire State Plaza, Albany, New York 12223-1350, 518-474-5453, [Safety@dps.state.ny.us]Safety@dps.ny.gov.

(49) *Active corrosion means continuing corrosion that, unless controlled, could result in a condition that is detrimental to public safety.*

(50) *Electrical survey means a series of closely spaced pipe-to-soil readings over pipelines which are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline.*

(51) *Pipeline environment includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.*

§ 255.65 Transportation of pipe.

(a) *Railroad.* In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by railroad unless the transportation is performed in accordance with API RP5L1, (as described in section 10.3 of this Title).

(b) *Ship or barge.* In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by ship or barge on both inland and marine waterways unless the transportation is performed in accordance with API Recommended Practice 5LW, (as described in Section 10.3 of this Title).

§ 255.125 Design of copper pipe.

(a) Copper pipe used in mains must have a minimum wall thickness of 0.065 inches (1.65 millimeters) and must be hard drawn.

(c) Copper pipe used in mains and service lines may not be used at pressures in excess of 100 PSIG (689 kPa).

(d) Copper pipe that does not have an internal corrosion resistant lining may not be used to carry gas that has an average hydrogen sulfide content of more than 0.3 grains per 100 standard cubic feet (2.83 cubic meters) of gas.

§ 255.143 General requirements.

(a) Each component of a pipeline must be able to withstand operating pressures and other anticipated loadings without impairment of its serviceability with unit stresses equivalent to those allowed for comparable material in pipe in the same location and kind of service. However, if design based upon unit stresses is impractical for a particular component, design may be based upon a pressure rating established by the manufacturer by pressure testing that component or a prototype of the component.

(b) *The design and installation of pipeline components and facilities must meet applicable requirements for corrosion control found in this Part.*

§ 255.145 Valves.

(d) No valve having shell (body, bonnet, cover, and/or end flange) components[pressure containing parts] made of ductile iron may be used at pressures exceeding 80 percent of the pressure ratings for comparable steel valves at their listed temperature.

(e) No valve having shell (body, bonnet, cover, and/or end flange) components[pressure containing parts] made of cast iron, malleable iron, or ductile iron may be used in the gas pipe components of compressor stations.

255.191 - Design pressure of plastic fittings.

(a) [Thermoplastic]Thermosetting fittings for plastic pipe must conform to ASTM D 251[3]7 (as described in Section 10.3 of this Title).

(b) [Thermosetting]Thermoplastic fittings for plastic pipe must conform to ASTM D251[7]3 (as described in Section 10.3 of this Title).

§ 255.283 Plastic pipe: Qualifying joining procedures.

(a) *Heat fusion, solvent cement, and adhesive joints.* Before any written procedure established under subdivision 255.273(b) is used for making plastic pipe joints by a heat fusion, solvent cement, or adhesive method, the procedure must be qualified by subjecting specimen joints, made according to the procedure, to the following tests.

§ 255.383 Excess flow valve customer installation.

(c) Reporting. Each operator must[, on an annual basis, report the number of EFVs installed pursuant to section 255.383 as part of] report the EFV measures detailed in the annual report required by 49 CFR 191.11.

§ 255.465 External corrosion control: Monitoring.

(e) After the initial evaluation required by sections 255.455(b)-(c) and 255.457(b) of this Part, each operator [shall]must, not less than every 3 years at intervals not exceeding [3 years]39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this Part in areas in which active corrosion is found. The operator must

determine the areas of active corrosion by electrical survey. However, on distribution lines and where an electrical survey is impractical on transmission lines, areas of active corrosion may be determined by other means that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. [In this section:

(1) action corrosion means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety;

(2) electrical survey means a series of closely spaced pipe-to-soil readings over a pipeline that are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline; and

(3) pipeline environment means soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.]

§ 255.475 - Internal corrosion control: General.

(b)

(2) Replacement must be made to the extent required by the applicable requirements of sections 255.485, 255.487 or 255.489.

§ 255.631 Control room management.

(a) General.

(2) The procedures required by this section must be integrated, as appropriate, with operating and emergency procedures required by sections 255.605 and 255.615. An operator must develop the procedures no later than August 1, 2011 and must implement the procedures [no later than February 1, 2012] according to the following schedule. The procedures required by paragraphs (b), (c)(5), (d)(2) and (d)(3), (f) and (g) of this section must be implemented no later than October 1, 2011. The procedures required by paragraphs (c)(1) through (4), (d)(1), (d)(4), and (e) of this section must be implemented no later than August 1, 2012. The training procedures required by paragraph (h) of this section must be implemented no later than August 1, 2012, except that any training required by another paragraph of this section must be implemented no later than the deadline for that paragraph.

§ 255.711 Transmission lines: General requirements for repair procedures.

(a) *Temporary repairs.* Each operator [shall] must take immediate temporary measures to protect the public whenever:

(1) a leak, imperfection, or damage that impairs its serviceability is found in a segment of steel transmission line, or distribution main operating at 125 PSIG (862 kPa) or more in a Class 3 or 4 location; and

(2) it is not feasible to make a permanent repair at the time of discovery.

(b) [As soon as feasible, the operator shall make permanent repairs.] *Permanent repairs.* An operator must make permanent repairs on its pipeline system according to the following:

(1) *Non integrity management repairs:* The operator must make permanent repairs as soon as feasible.

(2) *Integrity management repairs:* When an operator discovers a condition on a pipeline covered under Subpart O-Gas Transmission Pipeline Integrity Management, the operator must remediate the condition as prescribed by paragraph 255.933(d).

(c) *Welded patch.* Except as provided in paragraph 255.717(b)(3), no operator may use a welded patch as a means of repair.

#### TRANSMISSION PIPELINE INTEGRITY MANAGEMENT

§ 255.901 Scope.

§ 255.945 Measuring program effectiveness.

(a) General. An operator must include in its integrity management program methods to measure[, on a semi-annual basis,] whether the program is effective in assessing and evaluating the integrity of each covered pipeline segment and in protecting the high consequence areas. These measures must include the four overall performance measures specified in ASME/ANSI B31.8S (as described in section 10.3 of this Title), section 9.4, and the specific measures for each identified threat specified in ASME/ANSI B31.8S, Appendix A. An operator must submit the four overall performance measures[, by electronic or other means, on a semi-annual frequency to the Department and OPS in accordance with section 255.951 of this Part. The performance measures must be complete through June 30 and December 31 of each year and must be submitted within 2 months after those dates.] as part of the annual report required by 49 CFR Section 191.17.

§ 255.951 Reporting requirements.

An operator must submit any [performance] report required by sections 255.901 through 255.951 of this Part to the Department. Such reports must also be submitted to the U.S. Department of Transportation in accordance with 49 CFR section 192.951.

§ 255.1001 Definitions that apply to sections 255.1003 through 255.1015.

(a) *Excavation Damage means any impact that results in the need to repair or replace an underground facility due to a weakening, or the partial or complete destruction, of the facility, including, but not limited to, the protective coating, lateral support, cathodic protection or the housing for the line device or facility.*

[(1) Excavation means any operation for the purpose of movement or removal of earth, rock, pavement or other materials in or on the ground by use of mechanized equipment or by blasting, including but not limited to, digging, auguring, backfilling, boring, drilling, grading, plowing in, pulling in, fence post or pile driving, tree root removal, sawcutting, jackhammering, trenching and tunneling; provided, however, that the following shall not be deemed excavation: the movement of earth by tools manipulated only by human or animal power; the tilling of soil for agricultural purposes; vacuum excavation; and sawcutting and jackhammering in connection with pavement restoration of a previous excavation where only the pavement is involved.

(2) Damage means any destruction or severance of any underground facility or its protective coating, housing or other protective device or any displacement of or removal of support from any underground facility which would necessitate repair of such facility.]

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

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

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

#### Consensus Rule Making Determination

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102(11)(b) and (c), it implements or conforms to non-discretionary provisions and makes technical changes or is otherwise non-controversial. This rulemaking proposes changes to Title 16 NYCRR Part 10, Referenced Material and 16 NYCRR Part 255 Transmission and Distribution of Gas. The proposed changes will bring Part 10 incorporated by reference materials up to date with standards incorporated by reference in the Federal Regulations contained in Title 49, Code of Federal Regulations, Part 192, Transportation of Natural Gas (49 CFR Part 192), and the proposed changes to Part 255 will incorporate final rulemakings contained in 49 CFR Part 192 made through June 16, 2011.

Additionally, four minor clarification and technical edits to Part 255 are being proposed. First, the e-mail address in the definition of "Department" is being updated to reflect the current and correct domain name. Second, in 1988, the Commission adopted a complete revision to Part 255 with purpose to align Part 255 numbering with that of 49 CFR Part 192 and to conform Part 255 to provision of 49 CFR Part 192 not already incorporated. Recently, an omission of a reference found in 49 CFR Part 192.475(b)(2) was noted in section 255.475(b)(2). Therefore, an amendment to section 255.475(b)(2) is being proposed to correct that omission and bring that section into conformance with 49 CFR Part 192.475(b)(2).

The third is a minor clarification to section 255.951, which requires reports necessary under sections 255.901 through 255.951 to be submitted. A clarification is needed to indicate to whom the reports are to be submitted to. It was not envisioned that the reports would be submitted directly to the Commission. Therefore, Staff recommends phrase "to the Department" be added to clarify to whom the reports should be submitted.

The fourth minor clarification is the revision of the definition of excavation damage found in section 255.1003. While the definition, as adopted in Case 10-G-0228, is the same as the one found in Title 16 NYCRR Part 753 and is equivalent to the definition found 49 CFR Part 192, a late comment received in Case 10-G-0228 indicates that there is enough confusion between the two definitions that adopting the Federal language verbatim is necessary in order to assure Part 255 fully conforms 49 CFR Part 192. Therefore, a verbatim definition of excavation damage as found in 49 CFR Part 192.1003 is being proposed.

The proposed consensus rulemaking would conform the Commission's regulations to the federal regulations with which operators of gas distribution pipelines and small LPG operators must currently comply. Staff has discussed these proposed revisions with various stakeholders. Based on communications with stakeholders, no person is likely to object to the adoption of the proposed rule as written. In accordance with the provisions of the State Administrative Procedure Act (SAPA) § 202(1)(b)(2)(i), this therefore, should be considered a consensus rule making.

**Job Impact Statement**

The Department of Public Service (DPS) projects that there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rule change. This proposed rule change will bring Part 10 incorporated by reference materials up to date with standards incorporated by reference in the Federal Regulations contained in Title 49, Code of Federal Regulations, Part 192, Transportation of Natural Gas (49 CFR Part 192), and the proposed changes to Part 255 will incorporate final rulemakings contained in 49 CFR Part 192 made through June 16, 2011. Additionally, four minor clarification and technical edits to Part 255 are being proposed.

Nothing in this proposed rule change will create any adverse impacts on jobs or employment opportunities in the state. No further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Job Impact Statement is not required and therefore one has not been prepared.

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## Racing and Wagering Board

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

#### Prohibited Use of Anabolic Steroids in Horse Racing and Testing of Plasma Samples

I.D. No. RWB-08-13-00003-P

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

**Proposed Action:** Amendment of sections 4043.15, 4120.2 and 4120.12 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 301(1), (2)(a) and 902(1)

**Subject:** Prohibited use of anabolic steroids in horse racing and testing of plasma samples.

**Purpose:** To include plasma samples and establish plasma thresholds in anabolic steroid testing of racehorses.

**Text of proposed rule:** Section 4043.15 of 9 NYCRR is amended to read as follows:

4043.15 Anabolic steroids

(a) [The use of one of four approved a]Anabolic steroids shall [be permitted] *not be administered except that the following substances may be administered during permitted time frames and at concentrations that on race day are less than these thresholds* [under the following conditions]:

(1) [Not to exceed the following permitted urine or plasma threshold concentrations:

(i) 16 B-hydroxystanozolol (metabolite of stanozolol [Winstrol]) - 1 ng/ml in urine;

(ii) Boldenone (Equipoise)[ in male horses other than geldings,]; *All horses may have less than 100 pg/ml (including free boldenone and boldenone liberated from its conjugates) [15 ng/ml in urine] in plasma;*

(2) [(iii)] Nandrolone: [-]

(i) *Female horses and geldings may have less than 100 pg/ml in plasma; and*

(ii) *Intact male horses may have less than [1 ng/ml in urine] 500 pg/ml in plasma.*

(3) *Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.*

(4) [(iv)] Testosterone:

[(a) In geldings - 20 ng/ml in urine; and

(b) In fillies and mares - 55 ng/ml in urine.]

(i) *Female horses and geldings may have less than 100 pg/ml in plasma; and*

(ii) *Intact male horses may have less than 2000 pg/ml in plasma.*

(5) *In addition, no anabolic steroid shall be administered by injection into a joint at any time.*

[(2)] (b) Any other anabolic steroids are prohibited to be administered.

[(3)] The presence of more than one of the above four approved anabolic steroids above the approved thresholds is not permitted.

[(4)] (c) Post-race urine or plasma samples collected from intact males must be identified to the laboratory.

[(5)] (d) Any horse to which a[n] *permissible* anabolic steroid has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentra-

tion of the drug[ in urine]. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

[(b)] (e) A violation of this section shall be considered a positive test within the meaning of this Part.

Section 4120.12 of 9 NYCRR is amended to read as follows:

4120.12 Anabolic steroids

(a) [The use of one of four approved a]Anabolic steroids shall [be permitted] *not be administered except that the following substances may be administered during permitted time frames and at concentrations that on race day are less than these thresholds* [under the following conditions]:

(1) [Not to exceed the following permitted urine or plasma threshold concentrations:

(i) 16 B-hydroxystanozolol (metabolite of stanozolol [Winstrol]) - 1 ng/ml in urine;

(ii) Boldenone (Equipoise)[ in male horses other than geldings,]; *All horses may have less than 100 pg/ml (including free boldenone and boldenone liberated from its conjugates) [15 ng/ml in urine] in plasma;*

(2) [(iii)] Nandrolone: [-]

(i) *Female horses and geldings may have less than 100 pg/ml in plasma; and*

(ii) *Intact male horses may have less than [1 ng/ml in urine] 500 pg/ml in plasma.*

(3) *Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.*

(4) [(iv)] Testosterone:

[(a) In geldings - 20 ng/ml in urine; and

(b) In fillies and mares - 55 ng/ml in urine.]

(i) *Female horses and geldings may have less than 100 pg/ml in plasma; and*

(ii) *Intact male horses may have less than 2000 pg/ml in plasma.*

(5) *In addition, no anabolic steroid shall be administered by injection into a joint at any time.*

[(2)] (b) Any other anabolic steroids are prohibited to be administered.

[(3)] The presence of more than one of the above four approved anabolic steroids above the approved thresholds is not permitted.

[(4)] (c) Post-race [urine or] plasma samples collected from intact males must be identified to the laboratory.

[(5)] (d) Any horse to which a[n] *permissible* anabolic steroid has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug[ in urine]. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

[(b)] (e) A violation of this section shall be considered a positive test within the meaning of this Part.

Paragraph 9 of Subdivision (e) of Section 4120.2 of 9 NYCRR is amended to read as follows:

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race which the horse is to compete:

(9) hormones and *non-anabolic* steroids, [(e.g., [testosterone,] progesterone, estrogens, chorionic gonadotropin, glucocorticoids (e.g., Prednisolone, Depomedrol), [and anabolic steroids (e.g. Equipoise), ]except in [conjunction with] joint [aspiration] *injections* as restricted in subdivision (i) of this section[; the use of anabolic steroids is governed by Rule 4120.12];

Subdivision (i) of Section 4120.2 of 9 NYCRR is amended to read as follows:

(i) In addition, a horse which has had a joint *injected* [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.

**Text of proposed rule and any required statements and analyses may be obtained from:** John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.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 and legislative objectives of such authority: The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 101(1) and 902(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel betting activities in the state, both on track and off-track, and the persons engaged therein, including the authority to regulate the use of drugs that can manipulate race performance. Section 902(1) prescribes that a state college within New York with an approved equine science program shall conduct equine drug testing to assure public

confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Board to promulgate any rules and regulations necessary to implement its equine drug testing program and to impose substantial administrative penalties for anyone who races drugged horses.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: These rule amendments have been identified by the New York Task Force on Racehorse Health and Safety as emergency measures required to protect the safety and health of thoroughbred race horses and jockeys in New York State. The New York State Racing and Wagering Board has reviewed these recommendations and has endorsed them for emergency adoption.

The Task Force was formed in 2012 after 21 equine deaths occurred between November 2011 and March 2012. The 21 deaths were more than double the expected frequency rate. The Task Force's investigation revealed troubling aspects with the way horses are examined and managed in this state and found that the health and safety of racehorses and jockeys will be improved by reducing the use of legal anti-inflammatory medications in the time after the horse is entered to race.

The amendments to Board Rule 4043.2(i) are necessary to control the administration of corticosteroids to thoroughbred horses. These amendments are necessary for the health and safety of both the horse and the jockeys/riders. The withdrawal periods in the rule were prescribed explicitly by the Task Force and are necessary to provide clear guidance as to when administration should be discontinued for the purposes of testing and for the safety of the horse. The intra-articular use of corticosteroids can mask the inflammatory changes ordinarily associated with joint disease, and can frustrate the pre-race clinical examination. For these reasons, regulation of intra-articular administration of corticosteroids is appropriate. The term "intra-articular" has been revised to "joint injection" in the rule text to more accurately reflect a vernacular of the trade.

The Task Force also identified the need to tighten controls over the use of clenbuterol, which is currently permitted as a 96-hour rule under the Board's rules. It is a potent bronchodilator that is approved by the Food and Drug Administration for treatment of lower airway inflammation and upper respiratory infections in a horse. The drug is used to prevent respiratory infections in horses experiencing exercise-induced pulmonary hemorrhage (respiratory bleeding). Some trainers have indicated that their horses look better and have increased appetites when treated with clenbuterol. The amendments will replace the existing 96-hour time restriction, prompting the change to subdivision (g) of 4043.2 of 9 NYCRR to remove any reference to clenbuterol, with a 14-day restriction to be found in a new paragraph (3) of subdivision (i) of 9E NYCRR.

The report stated that in addition to its pharmacological effect on the respiratory tract, clenbuterol mimics anabolic steroids in that it increases muscle and decreases fat in cattle, pigs, poultry and sheep. The report stated that there is a belief that illegally compounded clenbuterol has been used in thoroughbred horses as an alternative to prohibited anabolic steroids. The Task Force found: "It was abundantly clear to the Task Force that while the NYSRWB's time limit regarding clenbuterol was being followed, the medication is in common use as a substitute for anabolic steroids and not for the legitimate therapeutic purpose for which it is intended."

The Board also amended paragraph (9) of subdivision (e) of 4043.2 of 9 NYCRR to remove any references to steroids. This was not a recommendation by the Task Force, but in light of the Board's existing rule limiting the administration of anabolic steroids (Rule 4043.15) and the restrictions placed on corticosteroids in this rulemaking, the Board believes that Rule 4043.2(e)(9) should contain no reference to steroids, in order to avoid confusion.

The Task Force reported: "The failure of trainers to report intra-articular injections as required prevented the NYRA veterinarians from identifying a pattern of redundant...treatments that had the potential to misrepresent the true clinical condition of a horse." Therefore, in order to ensure proper notification, the Board amends Section 4043.4 of 9 NYCRR, which is commonly known as the "Trainer's Responsibility Rule," to require that a trainer maintain accurate records of all corticosteroid joint injections to a horse he or she trains. The corticosteroid reporting will require that a trainer submit a corticosteroid joint injection record to the Board within 48 hours of treatment so that examining veterinarians will have access to that information as part of the pre-race examinations. This amendment will improve the quality of pre-examinations, provide the Board with timely notice of any potential ailments and ensure that documentation is available in the event a horse's fitness comes into question.

In response to input from the New York Thoroughbred Racing Association, the Board added a provision in the CJI reporting rule, the new 9 NYCRR 4043.4(b), authorizing trainers to delegate the reporting responsibility to the treating veterinarians.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs for the New York Drug Testing and Research Program will be substantial. The cost for conducting administration trials necessary for Cortisone Testing will be \$36,000. The cost of related laboratory testing of samples for corticosteroids is \$18,000 per year. The cost of trial administrations of clenbuterol is \$6,000. The related laboratory testing of clenbuterol samples is \$5,000 per year.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will require the New York State Racing and Wagering Board to develop a filing system for corticosteroid reporting.

There will be no costs to local government because the New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel horse racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Board relied on its experience in collecting information and based upon its experience in the equine drug testing program. The costs associated with clenbuterol and corticosteroid testing was provided directly from the New York Drug Testing and Research Program.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers will be required submit paperwork to the Board in a manner prescribed by the Board.

7. Duplication: None.

8. Alternatives: These rule amendments are based upon the finding and recommendations of the Task Force and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: This rule can be implemented upon publication in the State register. The Board expects that this will be adopted as a final rule in either May or June 2013. It is currently in effect as an emergency rule.

#### **Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, Job Impact Statement**

As is evident by the nature of this rulemaking, 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.

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

#### **Use of Cellular Telephones in the Paddock**

**I.D. No.** RWB-08-13-00004-P

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

**Proposed Action:** This is a consensus rule making to add section 4104.14 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) 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 of proposed rule:** Section 4104.14 of 9 NYCRR is added read as follows:

*4104.14 Use of cellular telephones and electronic communication devices*

*The use of cellular telephones or any other electronic communication device, including devices that are capable of sending or receiving text messages or e-mails, by any person while in the paddock or receiving barn is restricted to use in an area designated by the Paddock Judge.*

*a. Notwithstanding the provisions of Rule 4104.11, a sign shall be posted prominently at the entrance of the paddock or receiving barn stating that the use of a cellular telephone or an electronic communication device by any person while in the paddock is restricted to an area designated by the Paddock Judge and identified by a sign that reads "Designated Cell Telephone Area".*

*b. Nothing contained in this rule shall diminish the right of any track to adopt or implement more restrictive procedures concerning the use of cellular telephones and other electronic devices.*

*c. This section shall continue for one year after the date that it goes into effect.*

**Text of proposed rule and any required statements and analyses may be obtained from:** John Googas, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, New York, (518) 395-5400, email: info@racing.ny.gov

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

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

#### **Consensus Rule Making Determination**

No person is likely to object to the adoption of this rule because this rule has been in effect since February 15, 2012 and no person has objected to it, nor has there been anything controversial that occurred since it was implemented.

When this rule was adopted by the Racing and Wagering Board on January 25, 2012, it included a sunset provision of one year. The rule will expire on February 15, 2013. This adoption is necessary to extend the rule for another year from the publication date of the Notice of Adoption.

#### **Job Impact Statement**

This proposal does not require a Job Impact Statement as the amendment deals with the conduct of personnel within the paddock or receiving barn at a licensed harness race track. Consequently, the rule does not adversely affect jobs. The rule proposal requires Paddock Judges, who are employees of the New York State racing and Wagering Board, to designate areas where track personnel may use their cellular telephones or electronic communication devices, prominently post signs regarding the restricted use of cell phones in the paddock and other signs that identify the cellular phone use area. This rule has been in effect on a one-year term since February 15, 2012 and there has been no adverse impact on jobs as a result.

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

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

**I.D. No.** RWB-08-13-00005-P

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

**Proposed Action:** Amendment of section 4038.5 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, section 101(1)

**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 of proposed rule:** Under subdivision (a) of Section 4038.5 of Title 9 NYCRR, Item (iii) is added and Item (i) is amended to read as follows:

i. the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section [4038.18] 4038.19 of this subchapter unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; and

ii. a claim shall be void for any horse that dies during a race or is euthanized on the track following a race[.]; and

iii. a claim is voidable at the discretion of the new owner, for a period of one hour after the race is made official, for any horse that is vanned off the track after the race.

**Text of proposed rule and any required statements and analyses may be obtained from:** John Googas, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.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 and legislative objectives of such authority: The Board is authorized to promulgate this rule pursuant to Racing Pari-Mutuel Wagering and Breeding Law section 101(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to assure integrity, safety and public confidence in claiming races by removing incentives to use the claiming race process as a means of racing and transferring unsound horses. This rulemaking removes the incentive to enter an unsound horse in a claiming race with the intended goal of protecting both the health and safety of the equine and human athlete.

A claiming horse is, in effect, offered for sale at a designated price within the range of the claiming race at which they are entered by their owners. The potential buyer of a horse in a claiming race must enter his claim before the race. By entering a horse in a claiming race, the owner is offering his horse for sale to another individual.

This amendment will reduce the incidence of injuries/deaths in horse races by changing the claiming rule to allow a successful claimant to void a claim when the horse is unable to walk off the track and must be transported – or vanned – off the race track. The current rule provides a regulatory mechanism by which a successful claimant may void a claim in the event that a horse dies during the race or is euthanized on the track.

Adoption of this amendment was recommended by the New York Task Force on Racehorse Health and Safety, which recently released its report of investigation concerning the death of 21 thoroughbred race horse between November 2011 and March 2012. The report stated: "The Task Force recommends that the NYSRWB Rule 4038.5 be amended to provide that a claim is voidable, at the discretion of the claimant and within one hour of the conclusion of the race, for a horse that is vanned off the track." The report further states: "The Task Force believes the NYSRWB emergency amendment to Rule 4038 (in April 2012) represents an improvement by establishing a deterrent to the willful entry of a compromised horse, but that it should be further amended to provide that a claim is voidable by the claimant within one hour of the conclusion of the race if the horse is vanned off the track. The voiding of a claim should not require the death of a horse."

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Board staff reviewed the cost factors and determined that the rule can be implemented using the existing system for voiding a claim, and no additional costs will be added.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork. The process will rely on the existing administrative forms and processes for voiding a claim.

7. Duplication: None.

8. Alternatives. Proposals include allowing the claimant to void a claim immediately after a race for no reason or giving race secretaries authority to include the above condition in claiming races. These alternatives were considered impractical.

The Board also considered a rule to required the stewards to consult with a designated veterinarian before voiding a claims for a horse that has suffered a catastrophic injury or death before it was unsaddled following its race. This alternative was rejected in favor of the proposed rule, which is a bright line threshold rather than an arguably judgmental determination.

9. Federal standards: None.

10. Compliance schedule: This rule is currently in effect as an emergency rule. It can implemented upon adoption and publication in the State Register, which is anticipated to be May 2013.

#### **Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, Job Impact Statement**

As is evident by the nature of this rulemaking, this proposal affects the voiding of claims where a horse is injured during a race and requires transportation off the track and will not have an adverse affect on jobs or

small businesses. The narrow economic impact of this amendment is limited to those instances where a claim on a thoroughbred race horse is voidable if the horse is unable to walk off the race track and is transported off the track. The Board previously adopted a similar rule that allowed a claim to be voided if the horse dies on the track or is euthanized. Since that rule was adopted as an emergency rule in April 2012, there has been only one instance of a claimed horse dying on the track. The indirect economic impact of this rule is that it will discourage horse owners from entering unsound horses in claiming races. The Board believes that this limited economic impact will not adversely impact rural areas, jobs, small businesses or local governments and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. This amendment is intended to reduce an incentive to race an unsound horse. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. There will be no impact for reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. A Jobs Impact Statement is not required because this rule amendment will not adversely impact jobs. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.

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

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

**I.D. No.** RWB-08-13-00006-P

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

**Proposed Action:** Amendment of sections 4043.2 and 4043.4 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) 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 proposed 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)](5) clenbuterol;
- [(6)](5) detomidine;
- [(7)](6) glycopyrrrolate;
- [(8)](7) guaifenesin;
- [(9)](8) hydroxyzine;
- [(10)](9) isoxsuprine;
- [(11)](10) lidocaine;
- [(12)](11) mepivacaine;
- [(13)](12) pentoxifylline;
- [(14)](13) phenytoin;
- [(15)](14) pyrilamine;
- [(16)](15) xylazine.

[They] Such substances may not 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 gonadotropin[, 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.

**Text of proposed rule and any required statements and analyses may be obtained from:** John Googas, NYS Racing and Wagering Board/NYS Gaming Commission, One Broadway Plaza, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.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 and legislative objectives of such authority: The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 101(1) and 902(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel betting activities in the State, both on track and off-track, and the persons engaged therein, including the authority to regulate the use of drugs that can manipulate race performance. Section 902(1) prescribes that a state college within New York with an approved equine science program shall conduct equine drug testing to assure public confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Board to promulgate any rules and regulations necessary to implement its equine drug testing program and to impose substantial administrative penalties for anyone who races drugged horses.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: These rule amendments have been identified by the New York Task Force on Racehorse Health and Safety as emergency measures required to protect the safety and health of thoroughbred race horses and jockeys in New York State. The New York State Racing and Wagering Board has reviewed these recommendations and has endorsed them for emergency adoption.

The Task Force was formed in 2012 after 21 equine deaths occurred between November 2011 and March 2012. The 21 deaths were more than double the expected frequency rate. The Task Force's investigation revealed troubling aspects with the way horses are examined and managed in this State and found that the health and safety of racehorses and jockeys will be improved by reducing the use of legal anti-inflammatory medications in the time after the horse is entered to race.

The amendments to Board Rule 4043.2(i) are necessary to control the administration of corticosteroids to thoroughbred horses. These amendments are necessary for the health and safety of both the horse and the jockeys/riders. The withdrawal periods in the rule were prescribed explicitly by the Task Force and are necessary to provide clear guidance as to when administration should be discontinued for the purposes of testing and for the safety of the horse. The intra-articular use of corticosteroids can mask the inflammatory changes ordinarily associated with joint disease, and can frustrate the pre-race clinical examination. For these reasons, regulation of intra-articular administration of corticosteroids is appropriate. The term "intra-articular" has been revised to "joint injection" in the rule text to more accurately reflect a vernacular of the trade.

The Task Force also identified the need to tighten controls over the use of clenbuterol, which is currently permitted as a 96-hour rule under the Board's rules. It is a potent bronchodilator that is approved by the Food and Drug Administration for treatment of lower airway inflammation and upper respiratory infections in a horse. The drug is used to prevent respiratory infections in horses experiencing exercise-induced pulmonary hemorrhage (respiratory bleeding). Some trainers have indicated that their horses look better and have increased appetites when treated with clenbuterol. The amendments will replace the existing 96-hour time restriction, prompting the change to subdivision (g) of 4043.2 of 9 NYCRR to remove any reference to clenbuterol, with a 14-day restriction to be found in a new paragraph (3) of subdivision (i) of 9E NYCRR.

The report stated that in addition to its pharmacological effect on the respiratory tract, clenbuterol mimics anabolic steroids in that it increases muscle and decreases fat in cattle, pigs, poultry and sheep. The report stated that there is a belief that illegally compounded clenbuterol has been used in thoroughbred horses as an alternative to prohibited anabolic steroids. The Task Force found: "It was abundantly clear to the Task Force that while the NYSRWB's time limit regarding clenbuterol was being followed, the medication is in common use as a substitute for anabolic steroids and not for the legitimate therapeutic purpose for which it is intended."

The Board also amended paragraph (9) of subdivision (e) of 4043.2 of 9 NYCRR to remove any references to steroids. This was not a recommendation by the Task Force, but in light of the Board's existing rule limiting the administration of anabolic steroids (Rule 4043.15) and the restrictions placed on corticosteroids in this rulemaking, the Board believes that Rule 4043.2(e)(9) should contain no reference to steroids, in order to avoid confusion.

The Task Force reported: "The failure of trainers to report intra-articular injections as required prevented the NYRA veterinarians from identifying a pattern of redundant...treatments that had the potential to misrepresent the true clinical condition of a horse." Therefore, in order to ensure proper notification, the Board amends Section 4043.4 of 9 NYCRR, which is commonly known as the "Trainer's Responsibility Rule," to require that a trainer maintain accurate records of all corticosteroid joint injections to a horse he or she trains. The corticosteroid reporting will require that a trainer submit a corticosteroid joint injection record to the Board within 48 hours of treatment so that examining veterinarians will have access to that information as part of the pre-race examinations. This amendment will improve the quality of pre-examinations, provide the Board with timely notice of any potential ailments and ensure that documentation is available in the event a horse's fitness comes into question.

In response to input from the New York Thoroughbred Racing Association, the Board added a provision in the CJI reporting rule, the new 9 NYCRR 4043.4(b), authorizing trainers to delegate the reporting responsibility to the treating veterinarians.

#### 4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs for the New York Drug Testing and Research Program will be substantial. The cost for conducting administration trials necessary for Cortisone Testing will be \$36,000. The cost of related laboratory testing of samples for corticosteroids is \$18,000 per year. The cost of trial administrations of clenbuterol is \$6,000. The related laboratory testing of clenbuterol samples is \$5,000 per year.

(b) Costs to the agency, the State and local governments for the implementation and continuation of the rule: None. The amendments will require the New York State Racing and Wagering Board to develop a filing system for corticosteroid reporting.

There will be no costs to local government because the New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel horse racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Board relied on its experience in collecting information and based upon its experience in the equine drug testing program. The costs associated with clenbuterol and corticosteroid testing was provided directly from the New York Drug Testing and Research Program.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers will be required submit paperwork to the Board in a manner prescribed by the Board.

7. Duplication: None.

8. Alternatives. These rule amendments are based upon the finding and recommendations of the Task Force and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: This rule can be implemented upon publication in the State Register. The Board expects that this will be adopted as a final rule in either May or June 2013. It is currently in effect as an emergency rule.

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

As is evident by the nature of this rulemaking, 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.

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## Department of Taxation and Finance

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### NOTICE OF ADOPTION

#### Tax Return Filings for Licensed Farm Breweries

**I.D. No.** TAF-48-12-00008-A

**Filing No.** 143

**Filing Date:** 2013-01-30

**Effective Date:** 2013-02-20

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

**Action taken:** Amendment of section 60.1 of Title 20 NCYRR.

**Statutory authority:** Tax Law, section 171, subdivision First, 429(1), 436 (not subdivided)

**Subject:** Tax return filings for licensed farm breweries.

**Purpose:** To allow licensed farm breweries to file annual beer tax returns.

**Text or summary was published** in the November 28, 2012 issue of the Register, I.D. No. TAF-48-12-00008-P.

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

**Text of rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.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.