

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.

Education Department

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Licensure of Non-Degree Granting Private Proprietary Schools

I.D. No. EDU-45-12-00013-RP

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

Proposed Action: Amendment of Part 126 and section 145-2.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), 5001 through 5010; and L. 2012, ch. 381

Subject: Licensure of non-degree granting private proprietary schools.

Purpose: To implement the provisions of chapter 381 of the Laws of 2012.

Substance of revised rule: The Commissioner of Education proposes to amend Part 126 and Section 145-2.3 of the Commissioner's Regulations to implement Education Law sections 5001 through 5010, as amended by Chapter 381 of the Laws of 2012, effective March 14, 2013.

The following is a summary of the major provisions of the proposed rule.

The title of this Part has been amended to read "Licensed Private Career Schools or Licensed Private Schools".

Section 126.1 is amended to clarify the definitions for curriculum, course, gross tuition, school, reviewed financial statement, audited financial statement and Certified English as a Second Language School to be consistent with the new law. This section also adds new definitions for practical experience and occupationally required credential.

Section 126.3 is amended to eliminate the references to registration.

Section 126.4(a) is amended to make clear that where the department retains an expert or outside consultant to review the curriculum of a school,

the school shall bear the expense, in addition to any curriculum or course application fee.

Section 126.6(a) is amended to indicate that each applicant instead of the school shall submit teaching and management personnel applications. Section 126.6(c) of the Commissioner's Regulations is amended to indicate that all teacher licenses issued after December 15, 2012 would no longer be restricted to a single school location as private career schools licenses presently are.

Section 126.6(d) of the Commissioner's Regulations is amended to allow a school director to apply for a private school agent certificate without incurring the agent application fees. This section also clarifies the preparation requirements for directors; eliminates the references to registered business schools consistent with the new law; and eliminates the references to directors whose education and practical experience were approved prior to July 1, 1973.

Section 126.6(e) eliminates the reference to registered schools.

Section 126.6(f) sets forth the requirements for teacher licenses and permits in licensed private career schools, as appropriate, and eliminates the requirements for registered business schools/computer training facilities.

Section 126.6(n) indicates that in cases where the curricula/courses offered require the assistance of a vendor demonstrator, the need for a demonstrator must be included and approved in the specific course or curriculum approval.

Section 126.8(a) is amended to indicate that schools that are not financially viable are subject to having their licenses suspended or revoked, or the Commissioner may require the cessation of student enrollment. This section is also amended to eliminate the prior requirements and to require schools to submit to the Commissioner an annual financial statement that requires schools that receive \$500,000 or more or whose combined State and Federal student financial aid is \$100,000 or more to submit an audited financial statement. For schools which receive less than \$500,000 and less than \$100,000 in combined Federal and State student financial aid in a school fiscal year shall submit an unaudited reviewed financial statement or an audited financial statement to the commissioner for that fiscal year, provided that a reviewed financial statement cannot be submitted for two consecutive fiscal years. An audited financial statement must also be filed for the year following the fiscal year for which a reviewed financial statement was filed.

Section 126.9 is amended to require schools to include in their catalog a weekly tuition chart for each program that indicates the amount of a refund due a student upon withdrawal and the disbursement schedule for each type of financial assistance available. It also eliminates the option of allowing a school to submit an attestation that the catalog or bulletin meets all of the requirements.

Section 126.10 is amended to delete the references to registration and the requirement that the commissioner shall act on an initial application for a license or registration within 120 days of receipt of a complete application. This section also requires that upon transfer or assignment of any interest totaling 25 percent or more, the school shall be deemed a new school required to submit a new school application and obtain a new license pursuant to the requirements of this Part. The previous school license shall remain in effect until the new license is issued or denied or the previous license expires or is revoked, whichever comes first. This section also requires any school which received \$500,000 or more in gross tuition in a school fiscal year to submit to the commissioner an annual audited statement of revenue prepared in accordance with generally accepted accounting principles for that fiscal year. In addition, this section clarifies the requirements for an English as a Second Language school.

Section 126.12 is amended to reflect that the certificate will be effective for three years instead of two and to require a \$200 fee instead of \$100, except that the school director may apply for an agent's certificate without incurring the application fee.

Section 126.17 is amended to provide that new schools, which did not operate in the year prior to licensure, will have no gross tuition upon which

to be assessed until either the end of their first fiscal year or March 31 of the year after the school was licensed, whichever comes first. For schools whose fiscal year end comes before March 31 of the year after the school was licensed, the school shall submit a complete financial statement in compliance with the provisions set forth in Education Law section 5001(4)(e) is required. For schools whose fiscal year ends later than March 31 after their initial licensure date, the school shall submit an unaudited reviewed income statement for the time period between initial licensure and March 31 detailing the amount of gross tuition received during that period. Thereafter, complete financial statements shall be required.

Section 145-2.3 is amended to eliminate the references to registered private business schools and replace these references with licensed private career schools.

Revised rule compared with proposed rule: Substantial revisions were made in sections 126.6(f)(5), 126.7(b)(9) and 145-2.3.

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

Data, views or arguments may be submitted to: Carole Yates, NYS Education Department, Bureau of Proprietary School Supervision, Room 1613, 99 Washington Avenue, Albany, NY 12234, (518) 474-3969, email: cyates@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on November 7, 2012, revisions were made to the following sections of the proposed amendment:

The second to last sentence in section 126.6(a) of the Commissioner's regulations is reworded to make it clearer.

Section 126.6(f)(5)(a) of the Commissioner's regulations is renumbered to 126.6(f)(5)(i).

Section 126.7(b)(9) of the Commissioner's regulations is amended to eliminate the requirement that an enrollment agreement include a "provision for the method or methods of payment including, as appropriate, the disbursement schedule for each type of financial assistance available which shall meet the requirements set forth in section 5002(1)(b-1) of the Education Law".

Section 145-2.3 of the Commissioner's regulations was also amended to delete references to registered private business schools and to replace them with references to licensed private career schools to conform to Chapter 381 of the Laws of 2012.

These amendments do not require changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on November 7, 2012, revisions were made to the proposed rule as set forth in the Revised Regulatory Impact Statement set forth herewith.

These revisions do not require any changes to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on November 7, 2012, revisions were made to the proposed amendment as set forth in the Revised Regulatory Impact Statement submitted herewith.

These revisions do not require any changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on November 7, 2012, revisions were made to the proposed amendment as set forth in the Revised Regulatory Impact Statement submitted herewith.

The proposed rule, as revised, amends the licensure requirements for private, non-degree granting proprietary schools to implement Chapter 381 of the Laws of 2012. Because it is evident from the nature of the proposed revised rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the November 7, 2012 State Register, the State Education Department received comments from the public. The following is a summary assessing these comments:

1. COMMENT:

One commenter expressed concern with the change to section 126.7(b)(9) of the proposed amendment which requires an enrollment

agreement to include a provision for the method or methods of payment including, as appropriate, the disbursement schedule for each type of financial assistance available which shall meet the requirements set forth in section 5002(1)(b-1) of the Education Law. The commenter noted that disclosure in an enrollment agreement is not necessary and is not compliant with Federal regulations. (Financial Aid is already a highly regulated area and these types of disclosures are given to students in other documents. Additionally, this would allow for a potential cross-over of the world of financial aid into the admissions department, which is strictly prohibited by Federal regulations.)

RESPONSE:

The proposed amendment has been amended to eliminate this requirement.

2. COMMENT:

A commenter questions the amendment to 126.9(a)(19) of the Commissioner's regulations which requires each catalog to publish a catalog which includes "a weekly tuition liability chart for each program that indicates the amount of refund due the student in the event of withdrawal.

RESPONSE:

The proposed amendment implements Education Law 5002(3)(h), as amended by Chapter 381 of the Laws of 2012. Therefore, no change is warranted.

3. COMMENT:

A commenter challenges the deletion of the following provision in section 126.9 of the current Commissioner's regulations:

"As an alternative to the prior approval of a catalog or bulletin by the commissioner, a school may submit, in a form prescribed by the commissioner, an attestation that the catalog or bulletin meets all of the requirements set forth in subdivision (a) of this section, is true and accurate, and contains no false, misleading, or fraudulent representations. A subsequent determination by the commissioner that the catalog does not meet the requirements of subdivision (a) of this section, or is not true and accurate, or that the catalog contains false, misleading or fraudulent representations, may subject the school to disciplinary action, as prescribed in section 126.14 of this Part and section 5003 of the Education Law."

The commenter indicates that this amendment may delay the dissemination of information to students in a timely manner.

RESPONSE:

Section 5002(5)(f) of the Education Law provides that the Commissioner shall act upon a catalog within 90 days of receipt. The statute further states that if the Commissioner fails to act within 90 days, a catalog shall be deemed approved for one year. Therefore, the Department believes that there will be no delay in getting information to students and that no change is warranted.

Department of Financial Services

EMERGENCY RULE MAKING

The Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-04-13-00002-E

Filing No. 2

Filing Date: 2013-01-02

Effective Date: 2013-01-03

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

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

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' re-

sponse to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

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

Subject: The business conduct of mortgage loan servicers.

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

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

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

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 1, 2013.

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

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

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

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

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

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

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

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

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

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

2. Legislative Objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though

mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

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

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

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

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

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

3. Needs and Benefits.

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

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

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

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

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

mortgage loan servicers. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

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

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

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

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

4. Costs.

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

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

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

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

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

reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

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

8. Alternatives.

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

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance Schedule.

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

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

3. Professional Services:

None.

4. Compliance Costs:

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

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

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

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

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers: Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt

organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

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

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

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services’ conduct and prohibits certain practices such as engaging in deceptive business practices.

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

Minimizing Adverse Impacts: As noted in the “Costs” section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

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

programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

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

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

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

EMERGENCY RULE MAKING

Excess Line Placements Governing Standards

I.D. No. DFS-04-13-00003-E

Filing No. 31

Filing Date: 2013-01-07

Effective Date: 2013-01-07

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

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

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

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

Specific reasons underlying the finding of necessity: This regulation governs the placement of excess line insurance. Article 21 of the Insurance Law and Regulation 41 enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from unauthorized insurers (known as “excess line insurers”) if the unauthorized insurers are “eligible,” and an excess line broker places the insurance.

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

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

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

Subject: Excess Line Placements Governing Standards.

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

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

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

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

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

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

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

Section 27.2 is not amended.

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

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

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

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

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

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

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

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

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

The Department amended Section 27.14 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund, and to permit an actuary who is a fellow of the Casualty

Actuarial Society (FCAS) or a fellow in the Society of Actuaries (FSA) to make certain audits and certifications (in addition to a certified public accountant), with regard to the trust fund.

Section 27.15 is not amended.

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

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

Section 27.22 is not amended.

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

Section 27.24 is not amended.

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 6, 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 the promulgation of the Fourteenth Amendment to Insurance Regulation 41 (11 NYCRR Part 27) derives from Sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 9102, and Article 21 of the Insurance Law, Sections 202 and 302 of the Financial Services Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011.

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

Section 301 of the Insurance Law and Sections 202 and 302 of the Financial Services Law authorize the Superintendent of Financial Services (the “Superintendent”) to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law. Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

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

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

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

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

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

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

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

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

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

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

Although the NRRRA apparently precludes New York from requiring a foreign insurer to maintain a trust fund to be eligible in New York, or a

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

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

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

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

Costs to the Department of Financial Services also should be minimal, as existing personnel are available to review any modified filings necessitated by the regulations. In fact, filing forms electronically may produce a cost savings for the Department of Financial Services. These rules impose no compliance costs on any state or local governments.

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

The rule will require excess line brokers to file annual premium tax statements electronically, and to file electronically a listing that sets forth certain individual policy details. However, the excess line broker may

submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

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

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Department of Health

EMERGENCY RULE MAKING

Nursing Home Reserved Bedhold

I.D. No. HLT-04-13-00001-E

Filing No. 1

Filing Date: 2013-01-02

Effective Date: 2013-01-02

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

Action taken: Amendment of section 86-2.40(ac) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2808(25)(c)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulation on an emergency basis in order to implement, as expeditiously as possible, the new Medicaid reimbursement methodology for nursing homes related to the billing of bed reserve days and the per diem adjustment. PHL section 2808(25)(c) provided that these changes were to apply to rate periods beginning on and after July 1, 2012, and expressly authorized that the changes be implemented by regulation which could be promulgated on an emergency basis in order to achieve the \$40 million (gross in savings) in the 2012-13 fiscal year. In addition, implementing the methodology as soon as possible will be helpful to providers by mitigating the cash flow impact of retroactive claims processing and spreading the prospective per diem adjustment over as many months as possible. Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of the associated Medicaid State Plan Amendment.

Subject: Nursing Home Reserved Bedhold.

Purpose: To revise the rate of payment for reserved bed days billed for temporary hospitalizations.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by section 2808(25)(c) of the Public Health Law, Subdivision (ac) of section 86-2.40 of Subpart 86-2 of 10 NYCRR is amended effective July 1, 2012, to add a new paragraph (4), to read as follows:

(4)(i) *Subject to the availability of federal financial participation,*

for services provided on and after July 1, 2012, to patients 21 years of age and older, Medicaid payments for reserved bed days, as defined in paragraph (2) of this subdivision, which are related to a patient's hospitalization shall be reduced from 95% to 50% of the Medicaid rate otherwise payable to the facility with regard to such days of care.

(ii) *Subject to the availability of federal financial participation, for services provided on and after July 1, 2012, to patients 21 years old or older, Medicaid payments for reserved bed days, as defined in paragraph (2) of this subdivision, which do not involve the patient's hospitalization and which are (a) related to a patient's therapeutic leave of absence for visits to a health care professional that is expected to improve the patient's physical condition or quality of life and that is consistent with a plan of care ordered by such patient's treating health care professional, or (b) are other leaves of absences, shall be made at 95% of the Medicaid rate otherwise payable to the facility with regard to such days of care.*

(iii) *Medicaid payments for reserved bed days which are otherwise in accordance with the provisions of this paragraph shall be available with regard to each Medicaid patient for any twelve month period for up to a combined aggregate of fourteen days for hospitalizations and other therapeutic leaves of absences for visits to a health care professional that are expected to improve the patient's physical condition or quality of life and that are consistent with a plan of care ordered by the patient's treating health care professional, and for up to an aggregate of ten days for other leaves of absence, provided, however, that these limitations shall not apply to patients who are less than of 21 years of age.*

(iv) *Subject to the availability of federal financial participation, in the event the commissioner determines, in consultation with the director of the budget, that the reduction in payments for reserved bed days implemented by the provisions of subparagraph (i) of this paragraph shall achieve projected aggregate Medicaid savings, as determined by the commissioner, of less than forty million dollars for the state fiscal year beginning April first, two thousand twelve, and each state fiscal year thereafter, the commissioner shall establish a prospective per diem rate adjustment, subject to subsequent reconciliation and adjustment, for all nursing homes, other than nursing homes providing services primarily to children under the age of twenty-one, sufficient to achieve such forty million dollars in savings for each such state fiscal year.*

Paragraph (2) of subdivision (ac) of section 86-2.40 of Subpart 86-2 of 10 NYCRR is amended, to read as follows:

(2) For rate computation purposes, "patient days" shall include "reserved bed days", defined as the unit of measure denoting an overnight stay away from the facility for which the patient, or the patient's third-party payor, provides per diem reimbursement when the patient's absence is due to hospitalization or therapeutic leave consistent with a plan of care ordered by such patient's treating health care professional or due to other leaves of absences.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 1, 2013.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Public Health Law (PHL) section 2808(25)(c), as enacted by section 34 of part D of Chapter 56 of the laws of 2012, which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for reserved bed days for residential health care facilities. Such rate regulations are set forth in Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

For periods prior to July 1, 2012, PHL section 2808(25)(b), provided that Medicaid reimbursement to nursing homes for reserved bed days – days during which residents aged 21 years or older were absent due to temporary hospitalizations or other leaves of absence – would be limited to 95 percent of the otherwise applicable Medicaid rate. Payments were available for no more than 14 reserved bed days due to hospitalization and no more than 10 days due to non-hospitalization leaves in a 12 month period.

PHL section 2808(25)(c), enacted as part of the 2012-13 budget, requires the Commissioner of Health to amend the reserved bed day methodology by promulgating regulations establishing Medicaid rates for reserved beds days for periods on and after July 1, 2012. The statute requires that payments for absences, applicable to nursing home residents over 21 years of age, may be made for up to 14 days in the aggregate for

hospitalizations and therapeutic leaves of absences (which must be consistent with a plan of care ordered by the resident’s treating health care professional) and up to 10 days for other types of leave within in a 12 month period.

The objective of the statute is to discourage hospitalization of nursing home residents, recognize the need for therapeutic and other leaves of absence, and achieve savings in the Medicaid program. The statute also requires the Commissioner to establish a prospective per diem adjustment in rates in the event that the amended reserved bed day methodology does not achieve \$40 million of “gross” savings (i.e., combined Federal and State shares of Medicaid costs).

Needs and Benefits:

The proposed regulations support the objectives of PHL section 2808(25)(c). By amending the reserved bed day methodology to implement a reduction from 95 percent to 50 percent of the Medicaid rate for temporary hospitalizations and maintaining the 95 percent reduction for other types of absences, the regulation reflects the statutory intent to encourage nursing homes to help residents avoid hospitalization while recognizing that other types of leave are appropriate within reason. In particular, the proposed regulations define a therapeutic leave of absence as a visit to a health care professional, authorized by a health care professional, for purposes of improving the resident’s physical condition or quality of life in accordance with a plan of care. In addition, the proposed regulation will implement a per diem rate reduction for nursing homes which will, when combined with the annual savings achieved from the reserved bed day methodology, equals \$40 million in gross Medicaid savings as required by the statute.

The limitations on payment for reserved bed days and the per diem reduction in payments that will be implemented by this proposed regulation do not apply to pediatric patients, for which bed reserve days continue to be paid at 100 percent of the facility’s Medicaid rate.

Costs to Private Regulated Parties:

The proposed regulation will implement changes to the reserve bed payment methodology and a statutorily authorized per diem rate reduction, which will reduce Medicaid revenues to proprietary nursing homes. The regulation itself does not result in additional costs to private regulated parties.

Costs to State Government:

Amendments to the reserve bed day reimbursement methodology and the per diem rate adjustment will reduce gross Medicaid expenditures by \$40 million (\$20 million Federal, \$20 million State), as required by statute. The regulation itself does not result in additional costs to private regulated parties.

Costs to Local Government:

Local districts’ share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation. Amendments to the reserve bed day reimbursement methodology and the per diem rate adjustment will reduce gross Medicaid expenditures by \$40 million (\$20 million Federal, \$20 million State), as required by statute, which will reduce Medicaid revenues to publicly operated nursing homes. The regulation itself does not result in additional costs to publicly operated nursing homes.

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

The proposed regulation does not impose any additional paperwork.

Duplication:

The proposed regulation does not duplicate existing state or federal regulations.

Alternatives:

Given the requirements of PHL section 2808(25)(b), the only other alternative approach to the proposed regulation would be to reduce the reserved bed day payment for hospitalizations to something other than 50 percent, reduce the reserved bed day payment from 95 percent of the Medicaid rate to a lower percentage for therapeutic or other leaves of absence, and/or increase the per diem adjustment that will be made to reach \$40 million (gross) in savings. The approach taken by the proposed regulation is the most consistent with the statutory provisions, which clearly evidenced an interest in providing incentives to reduce hospitalizations of nursing home residents while permitting a certain level of therapeutic absences aimed at improving the resident’s physical health or quality of life. The per diem reduction will be reconciled to ensure that the combined savings of both the reduction in payments for hospitalizations from 95% to 50% of the Medicaid rate and the per diem reduction is not less than or more than \$40 million. In addition, the Department provided

the nursing home industry with the opportunity to make recommendations on the approaches taken to implement both the amendment to the bed hold methodology and per diem reduction, and no feasible alternatives were suggested.

Federal Standards:

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

Compliance Schedule:

The new methodology will be implemented by the eMedNY system. There are no additional compliance efforts required by the nursing homes.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer employees. Based on recent financial and statistical data extracted from residential health care facility cost reports, approximately 60 residential health care facilities were identified as employing fewer than 100 employees.

The regulation will implement a statutorily authorized per diem rate reduction and changes to the reserve bed payment methodology, which will reduce Medicaid revenues to publicly-operated and small business nursing homes. Local districts’ share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

The Department provided the nursing home industry, which represents small business and county nursing homes, with the opportunity to make recommendations on the approaches taken to implement the proposed amendment to the bed hold methodology and the per diem reduction to achieve the savings required by the statute.

Compliance Requirements:

There are no new compliance requirements.

Professional Services:

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

Compliance Costs:

The proposed regulation will implement a statutorily authorized per diem rate reduction and changes to the reserve bed payment methodology which will reduce Medicaid revenues to publicly operated nursing homes. The regulation itself will not result in additional costs to publicly operated nursing homes.

Economic and Technological Feasibility:

The proposed rule does not require additional technological or economic requirements.

Minimizing Adverse Impact:

The Department provided the nursing home industry with the opportunity to make recommendations on the approaches taken to implement both the amendment to the bed hold methodology and per diem reduction to achieve the savings required by the statute.

The per diem reduction will be reconciled to ensure that the combined savings of both the reduction in payments for hospitalizations from 95 percent to 50 percent of the Medicaid rate and the per diem reduction is not less than or more than \$40 million.

Small Business and Local Government Participation:

The Department provided the nursing home industry with the opportunity to make recommendations on the approaches taken to implement both the amendment to the bed hold methodology and per diem reduction to achieve the savings required by the statute.

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

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben

Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:
There are no additional compliance requirements as a result of the proposed rule.

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

Compliance Costs:
The proposed regulation will implement a statutorily authorized per diem rate reduction and changes to the reserve bed payment methodology, which will reduce Medicaid revenues to publicly operated nursing homes. The regulation itself will not result in additional costs to publicly operated nursing homes.

Minimizing Adverse Impact:
The Department provided the nursing home industry with the opportunity to make recommendations on the approaches taken to implement both the amendment to the bed hold methodology and per diem reduction to achieve the savings required by the statute.

The per diem reduction will be reconciled to ensure that the combined savings of both the reduction in payments for hospitalizations from 95 percent to 50 percent of the Medicaid rate and the per diem reduction is not less than or more than \$40 million.

Rural Area Participation:
The Department provided the nursing home industry with the opportunity to make recommendations on the approaches taken to implement both the amendment to the bed hold methodology and per diem reduction to achieve the savings required by the statute. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Job Impact Statement
A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is not expected that the proposed rule to revise the Medicaid reimbursement methodology for the payment of certain nursing home reserved bed days to help reduce temporary hospitalizations for residential nursing home facility patients and to implement a per diem rate reduction will have a material impact on jobs or employment opportunities across the nursing home industry.

Niagara Falls Water Board

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Adoption of Rates, Fees and Charges

I.D. No. NFW-04-13-00004-EP

Filing No. 32

Filing Date: 2013-01-07

Effective Date: 2013-01-07

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

Proposed Action: Amendment of section 1950.20 of Title 21 NYCRR.
Statutory authority: Public Authority Law, section 1230-j
Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: I determined that it is necessary for the preservation of the public health, safety and general welfare and that compliance with the requirements of subdivision one section 202 would be contrary to the public interest. The Board regulations include a schedule of rates, fees and charges imposed upon all persons served by the System. The Board recently considered estimates for its expenses and revenues for fiscal year 2013 commencing on January 1, 2013 and ending on December 31, 2013. As part of this consideration, the Board recognized an increase in expenses of operations and a projection of revenues from its existing rate payers in the City of Niagara Falls and related service area. In addition, the Board considered its debt service and its covenants with its bondholders with respect to bonds that were issued as of the acquisition date. In order to maintain the Board on a sound financial status with sufficient resources to provide necessary water and wastewater services to all persons who sue the System, the Board adopted an increase in the schedule of rates, fees and charges.

Subject: Adoption of Rates, Fees and Charges.
Purpose: To pay for the increased costs necessary to operate, maintain and manage the system, and to achieve covenants with bondholders.

Text of emergency/proposed rule: Section 1950.20. Schedule of rates, fees and charges.

(a) This schedule sets forth the rates, fees and other charges applicable to the provision of water supply, wastewater and related services by the Niagara Falls Water Board to all property owners, users and other persons as of January 1, 2013. All property owners, users and other persons who receive services from the water board shall pay to the water board the rates, fees and charges set forth in this schedule.

(b) the following rates shall be charged and collected for the use of water within the city, supplied by the water board as hereby fixed and established:

- First 20,000 cu. ft. per quarter, [\$2.88] \$3.05 per 100 cu. ft.
- Next succeeding 60,000 cu. ft. per quarter, [\$2.49] \$2.64 per 100 cu. ft.
- Next succeeding 120,000 cu. ft. per quarter, [\$2.11] \$2.24 per 100 cu. ft.

Over 200,000 cu. ft. per quarter, [\$1.75] \$1.86 per 100 cu. ft.
The minimum charge for water consumed in any premises within the city for any quarter or portion thereof shall not be less than [\$37.44] \$39.65.

(c) The following rates shall be charged and collected for the use of water outside the city for residential and commercial purposes supplied by the water board as hereby fixed and established:

- First 20,000 cu. ft. per quarter, [\$7.70] \$8.16 per 100 cu. ft.
- Next 60,000 cu. ft. per quarter, [\$6.72] \$7.12 per 100 cu. ft.
- Next succeeding 120,000 cu. ft. per quarter, [\$5.60] \$5.94 per 100 cu. ft.

Over 200,000 cu. ft. per quarter, [\$4.71] \$4.99 per 100 cu. ft.
The minimum charge for water consumed in any premises located outside the city for domestic purposes for any quarter or portion thereof shall not be less than [\$100.10] \$106.08.

(d) Water used for testing fire hoses, filling tanks, swimming pools, testing sprinkler systems, and like use shall be billed at the highest residential unit rate enumerated in subdivision (b) of this section. The amount used may be either estimated in accordance with the size of the pipe through which taken at the pressure furnished, or determined by the use of a temporary meter rented to the user by the water board. The use of the latter method shall be at the discretion of the director and may require a refundable deposit.

(e) Use of hydrant for any purpose whatsoever shall be subject to a rental charge of \$1.50 per day or partial day.

(f) The cost of hydrant use will include a fee of \$35.00 for backflow device certification, payable at the time of hydrant use application. In addition, daily hydrant and meter rental rates and security deposit amounts shall be established by the director based upon the real cost to the water board.

(g) In addition to the above schedule rates for water consumed there shall be assessed a demand charge for each user's meter as set forth below.

Size and Type	Charge Per quarter
Under 1" Disc	\$3.70
1" Disc	\$25.00
1½" Disc	\$30.00
2" Disc	\$40.00

2" Compound	\$40.00
3" Compound	\$50.00
4" Compound	\$100.00
6" Compound	\$220.00
8" Compound	\$250.00
10" Compound	\$275.00
12" Compound	\$400.00

(h) The rates set forth in this section, however, shall not apply to any user of water with whom there is now outstanding a valid and binding contract with the city and/or water board to supply water at a rate different than the rates stated in this schedule, or to users obtaining water service from the Village of LaSalle prior to May 4, 1927.

(i) In the event the water board or the director terminates water supply service to any property owner or user, such property owner, user or users located at such property shall pay a reactivation fee in the amount of \$75.00 to the water board prior to the supply of water.

(j) There shall be small meter testing charge of \$100.00 for the bench testing of any meter less than two inches in size.

(k) An account reactivation charge of \$100.00 shall be applied whenever a meter is re-installed and an account reactivated.

(l) The water board shall charge a \$25.00 final read fee for all owner requested meter reads.

(m) A hydrant flow test charge shall be applied whenever an owner, user or his agent requests a hydrant flow test.

(n) The annual availability charge for private fire protection service shall be:

Diameter of Service Connection	Annual Fee
2" or less	\$66.00
3"	\$95.00
4"	\$168.00
6"	\$380.00
8"	\$670.00
10"	\$1,050.00
12"	\$1,510.00

(o) A backflow submittal fee of \$25.00 shall be charged for all backflow plans submitted to the water board for approval and forwarding to the State Health Department.

(p) There shall be a \$120.00 inspection fee for each request for a cross-connection inspection.

(q) There shall be a \$60.00 availability charge applied on a quarterly basis to all accounts inactivated pursuant to section 1950.8(m) of this Part.

(r) In addition to the above rates, fees and charges, the following rates shall apply to all users with respect to sewer or wastewater services prescribed in the water board's wastewater regulations in Part 1960 of this Title. There shall be two user classes as provided in Part 1960 of this title, to wit: commercial/small industrial/residential users (CSIRU) and significant industrial users (SIU).

(1) CSIRU. Sewer rates for the CSIRU class are determined by total metered water consumption in each quarter. The schedule of quarterly charges for the CSIRU class shall be as follows:

SCHEDULE I

Minimum charge per quarter: [\$46.91] \$49.72 with a usage allowance of up to 1,300 cubic feet

Additional usage in excess of 1,300: [\$3.83] \$4.04 per 100 cubic feet

The following rates shall be charged and collected for the use of sewer outside the city for residential and commercial purposes as determined by total metered water consumption per quarter. The schedule of quarterly charges for the users outside the city shall be as follows:

Minimum charge per quarter: [\$125.25] \$132.77 with a usage allowance of up to 1,300 cubic feet

Additional usage in excess of 1,300: [\$10.22] \$10.83 per 100 cubic feet

(2) SIU.

(i) Conventional pollutant parameter charges. Sewer rates for the SIU class each quarter are based on measured quantities of the actual discharge parameters: flow, suspended solids and soluble organic carbon. Such determination shall be made by the water board and shall be based upon five representative 24-hour composite samples taken quarterly, at such locations as are adequate to provide proper representation. The schedule of charges for conventional pollutant parameters shall be as follows:

SCHEDULE II

Pollutant Parameters	Rate
Flow	[\$2,678.83] \$2,839.56 per million gallons
Suspended Solids	[\$0.89] \$0.94 per pound
Soluble Organic Carbon	[\$1.53] \$1.62 per pound

(ii) Substances of concern parameter charges. SIU's, who have wastewater discharge permits which limit any substance of concern listed in Schedule III contained in this subparagraph, will be billed for discharge of these substances based on the unit rates shown in Schedule III. Discharge loading for billing purposes shall be determined by arithmetic average of the last six acceptable self-monitoring results. At the option of the SIU, increased self-monitoring can be performed. For billing purposes, when six or more acceptable results are obtained over the three month billing period, all such results shall be used in the computation of the arithmetic average, with a requirement that there be at least two sample results for each month. Average discharge loadings will then be multiplied by the corresponding unit rates from Schedule III to obtain total charges per quarter for each substance of concern listed in the SIU's wastewater discharge permit. All substances of concern charges will be added to the charges for conventional parameters, as specified in subparagraph (i) of this paragraph, to compute the total quarterly sewer rate.

SCHEDULE III

SUBSTANCES OF CONCERN UNIT CHARGES

Parameters	Unit Rate
Benzene	[\$303.60] \$321.82 per pound
Chloroform	[\$54.06] \$57.30 per pound
Dichloroethylenes	[\$330.33] \$350.15 per pound
Toluene	[\$14.64] \$15.52 per pound
Trichloroethanes	[\$68.65] \$72.77 per pound
Trichloroethylene	[\$87.62] \$92.88 per pound
Vinyl Chloride	[\$43.86] \$46.49 per pound
Monochlorotoluenes	[\$2.96] \$3.14 per pound
Tetrachloroethylene	[\$40.90] \$43.35 per pound
Total Phenols	[\$6.68] \$7.08 per pound

(iii) Billing. SIU charges shall be billed on a monthly basis by the water board. The first and second monthly billings in each quarter shall be estimated and shall be one-third of the total billing in the immediately preceding quarter. The third monthly bill in each quarter shall be based upon actual discharge quantities for that quarter and shall reflect adjustments for the estimated billings in that quarter.

(s) Unless the context specifically indicates otherwise, all terms contained herein shall have the meanings set forth in the regulations adopted by the water board in this Part and Part 1960 of this Title, as applicable.

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 6, 2013.

Text of rule and any required statements and analyses may be obtained from: John J. Ottaviano, Niagara Falls Water Board, 172 East Avenue, Lockport, New York 14094, (716) 438-0488, email: ottaviano@ruppbase.com

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

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

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Smoking Policy Inside and on Grounds of OPWDD Operated and Certified Settings

I.D. No. PDD-46-12-00016-A

Filing No. 34

Filing Date: 2013-01-08

Effective Date: 2013-01-23

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

Action taken: Addition of section 633.23; and amendment of Subpart 635-7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Smoking policy inside and on grounds of OPWDD operated and certified settings.

Purpose: To prohibit smoking at OPWDD operated and certified settings and to delineate the exceptions to the prohibition.

Text or summary was published in the November 14, 2012 issue of the Register, I.D. No. PDD-46-12-00016-EP.

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

Text of 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

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.

Assessment of Public Comment

OPWDD received comments from the New York City Department of Health and Mental Hygiene (DOHMH), the NYC Coalition for a Smoke-Free City, a member of the public, and the family of a person receiving residential services from OPWDD.

Comment: DOHMH expressed full support for the proposed regulations regarding smoking restrictions inside and on the grounds of OPWDD operated and OPWDD certified facilities. DOHMH commented that "reducing smoking prevalence and exposure to secondhand smoke is one of the key priorities of DOHMH, and the proposed regulations will help further these goals." DOHMH noted that it encourages all OPWDD operated and OPWDD certified programs to adopt smoke-free policies and advised that it can provide resources to assist the programs toward that end.

Response: OPWDD appreciates the support from DOHMH and thanks the agency for guidance on resources available to New York City provider agencies.

Comment: The NYC Coalition for a Smoke-Free City expressed support for adoption of the proposed regulations regarding smoking restrictions inside and on the grounds of OPWDD operated and OPWDD certified facilities. The Coalition believes that the new rules will complement the existing New York State Clean Indoor Air Act by covering more OPWDD operated and OPWDD certified facilities, thereby protecting the health of more New York State residents.

Response: OPWDD appreciates the support from the NYC Coalition for a Smoke-Free City.

Comment: A member of the public expressed full support of emergency and permanent adoption of provisions that will curtail the use of tobacco products on any OPWDD property and its immediate surroundings.

Response: OPWDD appreciates the support from this member of the public.

Comments: The family of an individual who resides in an OPWDD residence noted that, although the stated purpose of the regulations is to "protect the health, safety, and welfare of individuals receiving services in residential ... facilities certified or operated by OPWDD," all persons receiving services may smoke outdoors and persons who reside in certain certified facilities may also smoke indoors. The family commented that the regulations will not meet the stated purpose under these circumstances. The family, which expressed concern about an individual's right to smoke

in a supervised home, also posited that smoking in supervised homes "probably is safer" than smoking in supportive homes.

Response: OPWDD acknowledges these comments. OPWDD is committed to protecting the health, safety, and welfare of all individuals receiving services. These regulations seek to balance health and safety concerns with individual choices, as well as differences in living arrangements.

Comment: In the context of fire safety, the family noted that the regulations address a problem that does not exist. The family noted that no fires in the OPWDD system have been attributed to smoking by persons receiving services.

Response: OPWDD disagrees with this perspective. According to the United States Fire Administration, approximately 1,000 people die every year in their homes from fires caused by cigarettes and other smoking materials. There is ample evidence that smoking is a potential, but preventable, cause of fires. The indoor smoking prohibition and outdoor smoking limitations included in the regulations address fire safety risks and are in keeping with OPWDD's commitment to protecting the safety of individuals receiving services.

Comment: The family commented that the regulations are in violation of OPWDD's Guiding Principle to "Put People First," in violation of the Willowbrook Permanent Injunction, and in violation of the federal Americans with Disabilities Act because the indoor smoking prohibition does not sufficiently accommodate a smoker's interests.

Response: OPWDD disagrees with these comments. OPWDD must balance accommodation of individual interests with protections to address the rights and safety of others.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Grant, Deny or Modify, in Whole or in Part, the Petition for Waiver of National Grid's Tariff Rule 47

I.D. No. PSC-04-13-00005-P

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

Proposed Action: The Commission is considering whether to grant, modify or deny a petition by NOCO Energy Corporation for waiver of Niagara Mohawk Power Corporation d/b/a National Grid's electric tariff Rule 47.

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

Subject: Whether to grant, deny or modify, in whole or in part, the petition for waiver of National Grid's tariff Rule 47.

Purpose: To determine whether to grant, deny or modify, in whole or in part, the petition for waiver of National Grid's tariff Rule 47.

Substance of proposed rule: The Commission is considering whether to grant, deny or modify, in whole or in part, the petition of NOCO Energy Corp. for a limited waiver of tariff Rule 47 contained in the tariff for electric service of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid). The waiver is requested so that NOCO Energy Corp. may aggregate various delivery points not all on the same premises. The Commission may apply its decision here to other utilities.

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

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

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

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

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

(12-E-0494SP1)

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

Expansion of Mandatory Day Ahead Hourly Pricing for Customers of Orange and Rockland Utilities with Demands Above 100 KW

I.D. No. PSC-04-13-00006-P

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

Proposed Action: The Commission is considering a report filed by Orange and Rockland Utilities which details a proposal to expand mandatory day ahead hourly pricing to customers with demands above 100 kW.

Statutory authority: Public Service Law, section 66(1) and (12)

Subject: Expansion of mandatory day ahead hourly pricing for customers of Orange and Rockland Utilities with demands above 100 kW.

Purpose: To consider the expansion of mandatory day ahead hourly pricing for customers with demands above 100 kW.

Substance of proposed rule: On December 14, 2012, Orange and Rockland Utilities, Inc. (O&R or Company) filed a report with a proposed implementation plan for the expansion of the Company's mandatory day ahead hourly pricing program to include customers with demands above 100 kW. O&R filed the report as directed by the Commission in the Commission's June 15, 2012 Order issued in Case 11-E-0408. The Commission will consider O&R's proposed implementation plan and may accept, modify or reject that plan, in whole or in part. The Commission may also address related matters 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.

(11-E-0408SP4)

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

Authorization to Transfer Certain Real Property

I.D. No. PSC-04-13-00007-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 authorize the transfer of certain real property located in the Town of Lloyd, Ulster County, New York owned by Central Hudson Gas & Electric Corporation to JVS Ventures, LLC.

Statutory authority: Public Service Law, section 70

Subject: Authorization to transfer certain real property.

Purpose: To decide whether to approve the transfer of certain real property.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Central Hudson Gas & Electric Corporation seeking approval to transfer 0.14 acres of real property located in the Town of Lloyd, Ulster County, New York to JVS Ventures, LLC. 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.

(12-M-0552SP1)

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

NYSEG's Emergency Economic Development Programs for Assisting Customers Recovering from Superstorm Sandy

I.D. No. PSC-04-13-00008-P

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

Proposed Action: The Commission is considering a petition filed by New York State Electric and Gas Corporation (NYSEG) requesting approval of \$2.0 million in funding for Emergency Economic Development Programs to assist customers in recovering from Superstorm Sandy.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: NYSEG's Emergency Economic Development Programs for assisting customers recovering from Superstorm Sandy.

Purpose: Approval of NYSEG's Emergency Economic Development Program for assisting customers recovering from Superstorm Sandy.

Substance of proposed rule: The Public Service Commission is considering a petition filed on December 5, 2012 by New York State Electric and Gas Corporation (NYSEG) requesting approval of \$2.0 million in funding for Emergency Economic Development Programs to assist customers within its service territory in recovering from the effects of Superstorm Sandy. The Commission may adopt, reject or modify, in whole or in part, the relief proposed, and may resolve related matters.

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

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

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

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

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

(12-E-0550SP1)

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

National Grid's Emergency Economic Development Programs for Assisting Customers Recovering from Superstorm Sandy

I.D. No. PSC-04-13-00009-P

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

Proposed Action: The Public Service Commission is considering a petition filed by subsidiaries of National Grid requesting approval for \$30 million in funding for Emergency Economic Development Programs to assist customers in recovering from Superstorm Sandy.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: National Grid's Emergency Economic Development Programs for assisting customers recovering from Superstorm Sandy.

Purpose: Approval of National Grid’s Emergency Economic Development Programs for assisting customers recovering from Superstorm Sandy.

Substance of proposed rule: The Public Service is reviewing the petition of Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid for authorization to spend \$30 million on certain Emergency Economic Development Programs in order to provide assistance to qualified customers in its service territory recovering from the effects of Superstorm Sandy. The proposed spending for the Emergency Program is \$10 million for National Grid’s KeySpan Energy Delivery New York gas business and \$20 million for National Grid’s KeySpan Energy Delivery Long Island gas business. The Commission may adopt permanently, reject or modify the provisions of the Order.

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

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

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

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

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

(13-G-0001SP1)

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

Additional Financing of \$4.0 Million Related to a Transfer of Interests in Emkey to NEE

I.D. No. PSC-04-13-00010-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 filed by Emkey Energy LLC (Emkey) and certain affiliates and owners and NE Energy, Inc. (NEE) requesting the approval of additional financing of \$4.0 million related to a transfer of interests in Emkey to NEE.

Statutory authority: Public Service Law, sections 69 and 70

Subject: Additional financing of \$4.0 million related to a transfer of interests in Emkey to NEE.

Purpose: Approval of additional financing of \$4.0 million related to a transfer of interests in Emkey to NEE.

Substance of proposed rule: The Public Service Commission is considering a petition filed on December 14, 2012 by Emkey Energy LLC, Emkey Gathering LLC and Emkey Transportation, Inc. (together, Emkey) and certain of their owners and NE Energy, Inc. (NEE) requesting the approval, under lightened regulation, of additional financing in the amount of \$4.0 million supported by a lien on the 320-mile natural gas gathering system located in Chautauqua and Cattaraugus Counties in New York and in Erie, Crawford and Warren Counties in Pennsylvania that Emkey owns. The financing is related to the transfer of upstream ownership interests in Emkey to NEE. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(12-G-0565SP1)

State University of New York

NOTICE OF ADOPTION

Amend the Traffic and Parking Regulations at the State University of New York College of Technology at Farmingdale

I.D. No. SUN-24-12-00008-A

Filing No. 33

Filing Date: 2013-01-07

Effective Date: 2013-01-23

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

Action taken: Amendment of Part 569 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Amend the traffic and parking regulations at the State University of New York College of Technology at Farmingdale.

Purpose: Amend existing regulations to update location of parking lots, amend fines, and attach current map of campus.

Text or summary was published in the June 13, 2012 issue of the Register, I.D. No. SUN-24-12-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, University Plaza, S-325, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.