

# RULE MAKING ACTIVITIES

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

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

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

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## Office of Alcoholism and Substance Abuse Services

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

#### Definitions Pertaining to This Chapter

**I.D. No.** ASA-24-13-00007-P

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

**Proposed Action:** This is a consensus rule making to repeal Part 72 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.07(a) and 32.02

**Subject:** Definitions Pertaining to this Chapter.

**Purpose:** Repeal of an outdated Part in Title 14 NYCRR.

**Text of proposed rule:** Pursuant to the authority granted to the Commissioner of the Office of Mental Health in accordance with Section 7.09 of the Mental Hygiene Law, Title 14 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows:

14 NYCRR Part 72 is repealed.

**Text of proposed rule and any required statements and analyses may be obtained from:** Sara Osborne, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: SaraOsborne@oasas.ny.gov

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

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

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

This rule making is filed as a Consensus rule on the grounds that its purpose is to repeal a regulation that is obsolete; therefore, no person is likely to object.

14 NYCRR Part 72, Definitions Pertaining to this Chapter, was promulgated in 1973 by the Department of Mental Hygiene. When this regulation was promulgated, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities (now known as the Office for People With Developmental Disabilities, or “OPWDD”), and the Office of Alcoholism and Substance Abuse (now known as the Office of Alcoholism and Substance Abuse Services, or “OASAS”), were all a part of the Department of Mental Hygiene, and none had its own rule making authority. In 1977, the New York State Mental Hygiene Law was recodified, and the Department of Mental Hygiene was divided into three autonomous agencies, all of which have independent rule making authority.

14 NYCRR Part 72 is substantively obsolete. The regulation consists of definitions that are no longer current and includes references to Mental Hygiene Law Section 1.05, which was repealed by Chapter 978 of the Laws of 1977. Relevant definitions that pertain to Title 14 NYCRR have been added to the applicable Part. OMH has confirmed that neither OPWDD nor OASAS use Part 10 because it reflects an outdated lexicon. As a result, all three autonomous offices (OMH, OPWDD and OASAS) are proposing the repeal of the obsolete Part 72.

Statutory Authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

#### **Job Impact Statement**

A job impact statement is not being submitted with this notice because it is evident from the subject matter of the rule making that there will be no impact on jobs and employment opportunities. The consensus rule merely repeals an outdated regulation.

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## Education Department

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

#### **Fiscal Audits of Special Education Preschool Programs and Services for Which a Municipality Bears Responsibility**

**I.D. No.** EDU-24-13-00005-EP

**Filing No.** 544

**Filing Date:** 2013-05-28

**Effective Date:** 2013-05-28

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

**Proposed Action:** Amendment of section 200.18 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 4401(2), 4403(3), 4410(1)(g), (11)(c)(i), (ii) and (13); and L. 2013, ch. 57, section 24

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is needed to implement section 24 of the Chapter 57 of the

Laws of 2013 by establishing standards and procedures for municipalities, and the board of education of the city school district of the city of New York, that choose to perform fiscal audits of preschool special education programs and services pursuant to Education Law section 4410.

Because the Board of Regents meets at scheduled intervals, and does not meet during the month of August, the September 16-17, 2013 Regents meeting is the earliest the proposed rule could be presented for adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act (SAPA). Furthermore, pursuant to SAPA, the earliest a rule adopted at the September meeting could become effective is October 2, 2013, the date a notice of adoption is published in the State Register. However, section 24 of Chapter 57 of the Laws of 2013 directs the Commissioner to promulgate rules and regulations necessary to implement the statute within 60 days of the effective date of Chapter 57 of the Laws of 2013. Chapter 57 was signed into law on March 29, 2013 and the 60th day falls on May 28, 2013.

Emergency action is therefore necessary for the preservation of the general welfare in order to timely establish, pursuant to statutory requirements consistent with section 24 of Chapter 57 of the Laws of 2013, standards and procedures for those municipalities, and the board of education of the city school district of the city of New York, that choose to perform fiscal audits of Education Law section 4410 preschool special education programs and services.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the September 16-17, 2013 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

**Subject:** Fiscal audits of special education preschool programs and services for which a municipality bears responsibility.

**Purpose:** Implements L. 2010, ch. 57, section 24 by establishing standards and procedures for municipalities to perform fiscal audits.

**Text of emergency/proposed rule:** Subdivision (b) of section 200.18 of the Regulations of the Commissioner of Education is amended, effective May 28, 2013, as follows:

(b) Fiscal audits of approved preschool programs and services approved under section 4410 of the Education Law performed by the municipality and accepted by the commissioner.

(1) Each municipality, *or, in addition, in the case of a city having a population of one million or more, the board of education of the city school district of such city*, may perform fiscal audits of approved preschool programs and services for which it bears fiscal responsibility. Access to all records, property and personnel related to approved programs shall be provided during an audit. Access shall also apply to program costs allocated to approved programs. Such cost allocations to related programs are also subject to audit.

(2) Prior to conducting an audit of an approved preschool program, a municipality shall ascertain that neither the state nor any other municipality has performed a fiscal audit of the same services or programs within the current fiscal year for such program. If it is determined that no such audit has been performed, the municipality shall inquire with the department to determine which other municipalities, if any, bear financial responsibility for the services or programs to be audited and shall afford such other municipalities an opportunity to recommend issues to be examined through the audit. Municipalities completing such audits shall provide copies to the department, the provider of the services and programs and all other municipalities previously determined to bear financial responsibility for the audited services and programs. No other municipality may conduct an additional fiscal audit of the same services or programs during such current fiscal year for such program. Municipalities shall submit to the department for approval a detailed audit plan and audit program for the proposed audit; *provided that for any audit commenced on or after May 28, 2013, municipalities shall submit to the department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the department on or after such date.*

(3) Upon approval of the audit program and audit plan by the commissioner, the municipality may conduct audits in conformance with generally accepted auditing standards. *Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval.* Municipalities need not submit an audit program and audit plan for each audit to be performed *during the five year approval period* once approval has been granted by the commissioner. However, modifications to the approved audit plan and audit program shall be submitted to the department for review and approval *and new approval must be obtained once the five year approval period has concluded.*

(4) Once the audit is completed, a draft of the audit report shall be submitted to the commissioner for review and/or resolution. *In order to be*

*approved by the commissioner, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the department.* Upon approval, the audit shall be considered a State audit for the purposes of establishing the tuition rate based on audit.

(5) . . .

(6) . . .

**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 August 25, 2013.

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

**Data, views or arguments may be submitted to:** Ken Slentz, Deputy Commissioner P-12 Education, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 4401(2) defines special education services or programs, including related services.

Education Law section 4403 outlines the responsibilities of the Department with respect to the provision of education programs and services to students with disabilities and authorizes the Commissioner of Education to promulgate such rules and regulations pertaining to the physical and educational needs of such students as the Commissioner deems to be in their best interest.

Education Law section 4410(1)(g) defines "municipality" for purposes of the section. Education Law section 4410(11)(i) and (ii) provides that a municipality or, in addition, the board of education in a city having a population of one million or more, may perform a fiscal audit of special education programs and services for which it bears fiscal responsibility. Section 4410(13) authorizes the Commissioner to promulgate regulations to implement the provisions of Education Law section 4410.

Section 24 of Chapter 57 of the Laws of 2013 amended subparagraphs (i) and (ii) of paragraph (c) of subdivision (11) of Education Law section 4410 to direct the Department to provide guidelines on standards and procedures to municipalities and the board of education in a city with a population of one million or more, that choose to perform fiscal audits of services or programs pursuant to that section; and directs the Commissioner to promulgate rules and regulations necessary to implement section 24 of Chapter 57 of the Laws of 2013.

##### 2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed amendment is necessary to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education of the city school district of the city of New York, to perform fiscal audits of Education Law section 4410 preschool special education programs and services.

##### 3. NEEDS AND BENEFITS:

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education of the city school district of the city of New York, to perform fiscal audits of Education Law section 4410 preschool special education programs and services.

##### 4. COSTS:

(a) Costs to the State: none.

(b) Costs to local governments: none required. Pursuant to Education Law section 4410 (11)(c)(i), municipalities and the board of education in a city with a population of one million or more are not required to perform fiscal audits of the providers but may choose to do so voluntarily. If a municipality or the board choose to perform a fiscal audit, then prior to the enactment of Chapter 57 of the Laws of 2013, section 4410(11)(c)(i) required these voluntary audits to be performed in accordance with audit standards established by the commissioner. Section 24 of Chapter 57 of the Laws of 2013 expands this provision by directing the Department to create guidelines on the standards and procedures for fiscal audits, and the proposed regulation incorporates this requirement within the existing audit standards established by the commissioner (which require an approved audit plan and audit program). Depending on the existing audit plans and audit programs, municipalities and the board of education of the city

school district of the city of New York could potentially incur costs associated with developing an audit plan and program if they choose to perform a fiscal audit pursuant to Education Law section 4410 and their existing audit plan and program are not consistent with the guidelines provided by the Department as directed by section 24 of Chapter 57 of the Laws of 2013. These costs may be offset by funds that may be recovered by the municipality or board following an audit that identifies overpayments made to a provider as, pursuant to section 24 of Chapter 57 of the Laws of 2013, one hundred percent of these overpayments may be recovered.

(c) Costs to private regulated parties: none.

(d) Cost to regulating agency for implementation and continued administration of this rule: none. It is anticipated that the Department will utilize existing staff resources to develop the audit guidelines and review audit plans and programs submitted by the municipalities and board of education.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment implements section 24 of the Chapter 57 of the Laws of 2013 by requiring municipalities and the board of education of the city school district of the city of New York that choose to commence an audit on or after May 28, 2013, to submit to the Department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the Department on or after such date.

The proposed amendment also specifies that Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval; that municipalities or the board need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the Commissioner; but that modifications to the approved audit plan and audit program shall be submitted to the Department for review and approval and new approval must be obtained once the five year approval period has concluded. The proposed amendment further provides that once the audit is completed, a draft of the audit report shall be submitted to the Commissioner for review and/or resolution; and that in order to be approved by the Commissioner, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the Department.

#### 6. PAPERWORK:

The proposed amendment implements section 24 of the Chapter 57 of the Laws of 2013 by requiring municipalities and the board of education of the city school district of the city of New York that choose to commence an audit on or after May 28, 2013, to submit to the Department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the Department on or after such date.

The proposed amendment also specifies that municipalities or the board need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the Commissioner; but that modifications to the approved audit plan and audit program shall be submitted to the Department for review and approval and new approval must be obtained once the five year approval period has concluded. The proposed amendment further provides that once the audit is completed, a draft of the audit report shall be submitted to the Commissioner for review and/or resolution; and that in order to be approved by the Commissioner, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the Department.

#### 7. DUPLICATION:

The proposed amendment does not duplicate any existing State or Federal requirements, and is necessary to implement section 24 of Chapter 57 of the Laws of 2013.

#### 8. ALTERNATIVES:

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education in a city with a population of one million or more, to perform fiscal audits of Education Law section 4410 preschool special education programs and services. There are no significant alternatives and none were considered.

#### 9. FEDERAL STANDARDS:

There are no applicable Federal standards.

#### 10. COMPLIANCE SCHEDULE:

The regulation does not require action on the part of a municipality or the board of education of the city school district of the city of New York unless it voluntarily chooses to commence an audit on or after May 28, 2013. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

#### *Regulatory Flexibility Analysis*

##### Small Businesses:

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education in a city with a population

of one million or more, that choose to perform fiscal audits of Education Law section 4410 preschool special education programs and services. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

##### Local Government:

##### 1. EFFECT OF RULE:

The proposed amendment applies to municipalities, defined in Education Law section 4410(1)(g) as a county outside of the city of New York or the city of New York in the case of a county contained within the city of New York, and the board of education of the city of New York, that choose to perform a fiscal audit of Education Law section 4410 preschool special education programs and services for which the municipality bears fiscal responsibility. Pursuant to Education Law section 4410(1)(g), the proposed amendment is applicable to all counties in the State that are located outside of the city of New York and the city of New York in the case of a county contained within the city of New York.

##### 2. COMPLIANCE REQUIREMENTS:

The proposed amendment implements section 24 of the Chapter 57 of the Laws of 2013 by requiring municipalities and the board of education of the city of New York that choose to commence an audit on or after May 28, 2013, to submit to the Department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the Department on or after such date.

The proposed amendment also specifies that Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval; that municipalities and the board need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the Commissioner; but that modifications to the approved audit plan and audit program shall be submitted to the Department for review and approval and new approval must be obtained once the five year approval period has concluded. The proposed amendment further provides that once the audit is completed, a draft of the audit report shall be submitted to the Commissioner for review and/or resolution; and that in order to be approved by the Commissioner, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the Department.

##### 3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements. Existing statute (Education Law 4410) and regulation (Part 200.18) required municipalities and the board of education in the city of New York that choose to perform audits pursuant to Education Law section 4410 to do so in accordance with audit standards established by the commissioner.

##### 4. COMPLIANCE COSTS:

None required. Pursuant to Education Law section 4410 (11)(c)(i), municipalities and the board of education in a city with a population of one million or more are not required to perform fiscal audits of the providers but may choose to do so voluntarily. If a municipality or the board choose to perform a fiscal audit, then prior to the enactment of Chapter 57 of the Laws of 2013, section 4410(11)(c)(i) required these voluntary audits to be performed in accordance with audit standards established by the commissioner. Section 24 of Chapter 57 of the Laws of 2013 expands this provision by directing the Department to create guidelines on the standards and procedures for fiscal audits and the proposed regulation incorporates this requirement within the existing audit standards established by the commissioner (which require an approved audit plan and audit program). Depending on the existing audit plans and audit programs, municipalities and the board of education of the city of New York could potentially incur costs associated with developing an audit plan and program if they choose to perform a fiscal audit pursuant to Education Law section 4410 and their existing audit plan and program are not consistent with the guidelines provided by the Department as directed by section 24 of Chapter 57 of the Laws of 2013. These costs may be offset by funds that may be recovered by the municipality or board following an audit that identifies overpayments made to a provider as, pursuant to section 24 of Chapter 57 of the Laws of 2013, one hundred percent of these overpayments may be recovered.

##### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional costs or new technological requirements on local governments. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on local governments; municipalities and the board of education of the city of New York are not required to perform new functions pursuant to the proposed amendment.

##### 6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education in a city with a population of one million or more, to perform fiscal audits of Education Law section 4410 preschool special education programs and services. Because the statute upon which the proposed amendment is based applies to all affected municipalities in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt them from the provisions of the proposed amendment.

#### 7. LOCAL GOVERNMENT PARTICIPATION:

Meetings with representatives from the New York State Association of Counties and the New York City Board of Education were conducted to discuss the proposed regulation and a draft copy of the proposed regulation was provided to both entities on April 26, 2013.

#### 8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is needed to implement section 24 of Chapter 57 of the Laws of 2013 and therefore changes to the substantive provisions of the proposed amendment are dependent on further statutory changes. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to municipalities, defined in Education Law section 4410(1)(g) as a county outside of the city of New York or the city of New York in the case of a county contained within the city of New York, and the board of education of the city school district of the city of New York, that choose to perform a fiscal audit of Education Law section 4410 preschool special education programs and services for which the municipality bears fiscal responsibility. This proposed amendment impacts all counties including the 44 rural counties with less than 200,000 inhabitants.

##### 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment implements section 24 of the Chapter 57 of the Laws of 2013 by requiring municipalities and the board of education of the city school district of the city of New York that choose to commence an audit on or after May 28, 2013, to submit to the Department for approval a detailed audit plan and audit program which shall be consistent with guidelines on audit standards and procedures issued by the Department on or after such date.

The proposed amendment also specifies that Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval; that municipalities or the board need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the Commissioner; but that modifications to the approved audit plan and audit program shall be submitted to the Department for review and approval and new approval must be obtained once the five year approval period has concluded. The proposed amendment further provides that once the audit is completed, a draft of the audit report shall be submitted to the Commissioner for review and/or resolution; and that in order to be approved by the Commissioner, the draft audit shall be consistent with guidelines on audit standards and procedures issued by the Department.

The proposed amendment does not impose any additional professional services requirements.

##### 3. COSTS:

None required. Pursuant to Education Law section 4410 (11)(c)(i), municipalities and the board of education in a city with a population of one million or more are not required to perform fiscal audits of the providers but may choose to do so voluntarily. If a municipality or the board choose to perform a fiscal audit, then prior to the enactment of Chapter 57 of the Laws of 2013, section 4410(11)(c)(i) required these voluntary audits to be performed in accordance with audit standards established by the commissioner. Section 24 of Chapter 57 of the Laws of 2013 expands this provision by directing the Department to create guidelines on the standards and procedures for fiscal audits and the proposed regulation incorporates this requirement within the existing audit standards established by the commissioner (which require an approved audit plan and audit program). Depending on the existing audit plans and audit programs, municipalities and the board of education of the city school district of the city of New York could potentially incur costs associated with developing an audit plan and program if they choose to perform a fiscal audit pursuant

to Education Law section 4410 and their existing audit plan and program are not consistent with the guidelines provided by the Department as directed by section 24 of Chapter 57 of the Laws of 2013. These costs may be offset by funds that may be recovered by the municipality or board following an audit that identifies overpayments made to a provider as, pursuant to section 24 of Chapter 57 of the Laws of 2013, one hundred percent of these overpayments may be recovered.

#### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is needed to implement section 24 of the Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education in a city with a population of one million or more, to perform fiscal audits of Education Law section 4410 preschool special education programs and services. The statute which the proposed amendment implements applies to all affected municipalities throughout the State, including those in rural areas. Therefore, it was not possible to establish different requirements for entities in rural areas, or to exempt them from the amendment's provisions.

#### 5. RURAL AREA PARTICIPATION:

Meetings with representatives from the New York State Association of Counties, which includes counties located in rural areas, were conducted to discuss the proposed regulation and a draft copy of the proposed regulation was provided on April 26, 2013.

#### 6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment merely implements, and conforms the Commissioner's Regulations to, statutory requirements under Chapter 102 of the Laws of 2012 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

#### *Job Impact Statement*

The proposed amendment applies to municipalities, defined in Education Law section 4410(1)(g) as a county outside of the city of New York or the city of New York in the case of a county contained within the city of New York, and the board of education of the city of New York, that choose to perform a fiscal audit of Education Law section 4410 preschool special education programs and services for which the municipality bears fiscal responsibility.

The proposed amendment is needed to implement section 24 of Chapter 57 of the Laws of 2013 by establishing standards and procedures for municipalities, and the board of education in a city with a population of one million or more, that choose to perform fiscal audits of Education Law section 4410 preschool special education programs and services, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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## Department of Environmental Conservation

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### NOTICE OF ADOPTION

#### Special Snow Goose Harvest Program

**I.D. No.** ENV-07-13-00003-A

**Filing No.** 543

**Filing Date:** 2013-05-24

**Effective Date:** 2013-06-12

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

**Action taken:** Amendment of section 2.30 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0303, 11-0307, 11-0903, 11-0909 and 11-0917

**Subject:** Special Snow Goose Harvest Program.

**Purpose:** Revise regulations governing hunting of Snow Geese in New York.

**Text or summary was published** in the February 13, 2013 issue of the Register, I.D. No. ENV-07-13-00003-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Bryan L. Swift, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, email: wildliferegs@gw.dec.state.ny.us

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

#### **Initial Review of Rule**

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

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

The agency received no public comment.

### NOTICE OF ADOPTION

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

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

**Filing No.** 541

**Filing Date:** 2013-05-24

**Effective Date:** 2013-06-12

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

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

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

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

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

**Text or summary was published** in the February 20, 2013 issue of the Register, I.D. No. ENV-08-13-00002-EP.

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

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

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

#### **Initial Review of Rule**

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

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

We received telephone comments from four lobster permit holders regarding concerns about adoption of the “most restrictive rule”. These permit holders are authorized to fish in multiple Lobster Management Areas (LMA) including LMA 4 (ocean waters off the south shore of Long Island) and LMA 6 (Long Island Sound). Two permit holders from the east end of Long Island expressed concern that the “most restrictive rule” would compel them to either remove one of the LMAs from their lobster license and lose access to fish in that area, or require them to abide by multiple closed seasons of both LMA 4 and 6 (4.5 month closure). They maintain that either option would severely affect them financially. A significant portion of their lobster harvest comes from both areas. These permit holders are concerned that the most restrictive rule could put them out of business. East End lobster permit holders’ fishing areas are at the intersection of three different LMAs (2, 4, and 6). The two permit holders from the western end of Long Island had different concerns. Currently, these permit holders fish most of the time in LMA 4 since the collapse of the western LMA 6 lobster population. At present these permit holders rarely fish in LMA 6, but they don’t want to lose the ability to fish there in the future if the stock were to rebuild. These permit holders are willing to remove LMA 6 from their permit assuming they have the ability to reinstate the LMA in the future if stock conditions warrant it.

The department proposed alternative interpretations of the “most restrictive rule” to the ASMFC American Lobster Technical Committee (TC). The proposal would have allowed multi-area permit holders some flexibility to fish multiple areas without incurring full multiple season closures. The American Lobster TC and Management Board (Board) did not approve the alternatives due to their concern that the alternatives could result in increases or shifts in effort which could negatively affect local lobster population rebuilding. Since the ASMFC American Lobster TC and Board rejected the department’s alternative proposal, the department was unable to make changes to the proposed rule to decrease the effects on multi-area permit holders. The department is obligated to adopt requirements of ASMFC Fishery Management Plans or suffer the consequences of delayed implementation or a determination of non-compliance.

### NOTICE OF ADOPTION

#### **Bobcat Hunting and Trapping**

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

**Filing No.** 542

**Filing Date:** 2013-05-24

**Effective Date:** 2013-06-12

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

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

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

**Subject:** Bobcat Hunting and Trapping.

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

**Text or summary was published** in the February 20, 2013 issue of the Register, I.D. No. ENV-08-13-00007-P.

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

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

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

#### **Initial Review of Rule**

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

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

The Department of Environmental Conservation (DEC or department) received comments from over 400 individuals on the proposed amendments to bobcat hunting and trapping regulations during the 45-day public comment period (February 20 - April 5, 2013). The amended regulations will provide additional, sustainable bobcat harvest opportunities in many areas of the state, and standardize hunting and trapping season dates in areas where bobcat harvest opportunities already exist. Many of the comments simply offered support or opposition to the proposed regulations, whereas others offered more detailed arguments for or against the proposals. Overall, the comments were consistent with those received during summer 2012 on the draft “Management Plan for Bobcat in New York State 2012-2017”. This was not surprising because the proposed regulations were based upon the final bobcat management plan that was adopted in October 2012 (available at <http://www.dec.ny.gov/animals/9360.html>). A summary of the comments received during this rule-making, along with the Department’s response is provided below.

Many comments simply stated support for or opposition to trapping or hunting of bobcats and/or other wildlife species. People who were opposed to the proposed regulation stated their personal values against killing animals, a belief that human use of wildlife is inappropriate, and/or a belief that taking of wildlife should only be allowed to alleviate human-wildlife conflicts. We realize that many people do not approve of hunting, trapping, or other activities that involve capture or killing of wildlife. However, New York’s Environmental Conservation Law (ECL), as established by the New York State Legislature, specifically authorizes trapping and hunting of animals as a legitimate use of our wildlife resources. Consequently, the bobcat management plan and this regulation provide for the continued use of bobcats, while ensuring that it is done on a sustainable basis. This is accomplished through setting of appropriate seasons across the state, specifying allowable trapping techniques, and

monitoring bobcat populations and harvests. In addition, the harvest opportunity offered by promulgation of this regulation has a foundation in the central tenets of the North American Model of Wildlife Conservation - wildlife is a public trust resource and may be sustainably used for legitimate purposes. In accordance with the ECL and the North American Model, the question of whether to allow or not allow hunting and trapping of bobcats, or any other furbearing species, was not addressed in this rule-making.

Some comments stated that estimates of bobcat population size and acceptable harvest levels are not based on "sound science" and that further scientific study is needed before bobcat seasons can be modified. There is no practical way to estimate bobcat populations by methods that involve direct observations of the animals or their sign (e.g., tracks and droppings). The elusive nature of bobcats precludes the effective use of traditional visual observational studies such as those used for assessing other wildlife populations (e.g., waterfowl and songbirds). In the absence of complex field studies, the most common and generally accepted method involves analysis of data collected from hunters and trappers.

The bobcat population estimate noted in the management plan was developed by DEC biologists with assistance from Cornell University. The estimate is an extrapolation from harvest data using a conservative assumption of an approximate 10% harvest rate of bobcat in New York. Harvest totals in recent years via hunting and trapping have ranged between 400-500 animals per year, with an increasing trend over the long term (i.e., 1980s to 2000s). Using the upper limit of approximately 500 bobcats harvested annually, and assuming a 10% harvest rate, we estimated a population of approximately 5,000 bobcats. However, this estimate is only for those areas of New York where harvest is currently allowed (referred to as the "Current Harvest Area" in the bobcat management plan). The estimate does not include areas where we will institute conservative harvests (the "Harvest Expansion Area") and where we believe bobcat densities are comparable to or greater than those found in much of the Current Harvest Area. Had we used the actual mean harvest of 470 bobcats per year observed during 2005-2009, and a sustainable harvest rate of 14% calculated for bobcats in eastern New York, we would have estimated approximately 3,400 bobcats in just the Current Harvest Area.

The estimate of 5,000 (or 3,400) bobcats can be compared to available data on home range sizes for bobcats across North America. Based on data from 29 populations, female home ranges average about 16 km<sup>2</sup>, and male home ranges average about 40 km<sup>2</sup>. Based on those figures, and assuming that about half of upstate New York (or about 50,000 km<sup>2</sup>) is currently open for hunting and trapping, we would expect that area to support about 4,400 bobcats (about 3,125 females and 1,250 males). This suggests that our population estimates are reasonable.

The bobcat management plan and the regulations being adopted provide for a sustainable harvest while maintaining a stable or increasing population. We provide the population estimate for context, and historic harvest data show that current and proposed harvest opportunities can be allowed without negatively impacting bobcat populations. Bobcat harvests over the past 35 years have increased significantly; if bobcat populations were being overharvested, this trend would not have occurred. If populations were declining, harvest would have declined as bobcat densities decreased. The frequency of occurrence based on observation data indicates bobcat densities in central and western NY may be higher than those found in historic core areas and therefore capable of sustaining harvest. Given that regulations in our Current Harvest Area have been sustained for more than 30 years, and regulations adopted for our Harvest Expansion Area are very conservative, we are confident that the changes made pursuant to the plan will not adversely affect bobcat populations in any area of the state.

None of the comments received included additional data, or alternative interpretations of the data used by DEC, to evaluate the sustainability and impacts of expanded harvest opportunities provided by the proposed regulation. Upon adoption of the changes, the harvest of bobcats in all areas of New York will be closely monitored by Department biologists via activity logs maintained by hunters and trappers, a mandatory pelt sealing program, and hunter and trapper surveys. This will allow for "adaptive management" where regulations can be modified in the future to keep pace with the changing needs and status of our bobcat populations.

We received comments of varying types with a consistent theme: longer trapping seasons in the Northern Zone would negatively impact bobcat populations there; however, no scientific evidence was provided to support this claim, nor were any new analyses of existing data presented. The conservative seasons and highly regulated harvest of bobcats as adopted in the regulation are not expected to result in decreased bobcat populations anywhere in the state. Bobcat hunting and trapping have been occurring in many areas of New York, including the Northern Zone, since the 1970s, and extending the trapping season in the northern portion of the Current Harvest Area so it aligns with the existing hunting season dates for the

Northern Zone will have minimal impact on populations. We expect minimal additional harvest to occur because snow, ice, and poor road access limit trapper effort and success in the Adirondacks and Tug Hill during the winter months. In addition, the rugged landscape and limited road network in these areas creates refuge areas where bobcats are subject to little trapping pressure. We recently extended land trapping seasons for other furbearing species (i.e., fox, coyote, opossum, skunk, raccoon, and weasel) in eight Northern Zone WMUs, from December 10 until February 15, and only 3% of trappers took advantage of this new opportunity. Nevertheless, a small number of trappers appreciate reasonable opportunities to trap even during mid-winter and the proposal meets that interest while ensuring the population security of bobcat populations. In the Tug Hill area, where the bobcat hunting season would also be extended (to match the rest of northern New York), hunting is limited to those areas located near roads or along snowmobile corridors.

There is no evidence to suggest bobcat populations in the Adirondacks are geographically isolated from, or are more vulnerable than, populations in other parts of the state. Bobcats are highly mobile and can move significant distances. Bobcat populations have expanded across the southern tier of New York across a landscape with a higher road density and relatively greater amounts of habitat fragmentation than the Adirondacks. This evidence suggests that bobcats are not restricted from moving through, coming from, or moving into the Adirondacks. Hunting and trapping seasons in southeastern New York (i.e., the Hudson Valley, Taconics, and Catskills) have existed for many years, and despite this, bobcat populations have continued to increase in size and expand their distribution. This regulation amendment makes no changes to existing seasons in the portions of the southern tier that are currently open to hunting and trapping.

Some comments expressed concern over increased harvest opportunities for bobcat resulting in decreased bobcat abundance, thus limiting this species ability to control prey populations such as deer and small mammals. Bobcats are one of many mammalian predators that exist on the landscape across New York State, along with coyotes, fox, fisher, marten, raccoon, and others. In New York, bobcats are considered a generalist and opportunistic predator, meaning they have a very diverse and seasonally variable prey base. Bobcats usually consume mammalian prey, especially rabbits, hares, and other mammals ranging in size from mice and voles to deer. Bobcat home ranges vary widely depending on food availability, but because bobcats occur in such low densities (home range size is about 16 km<sup>2</sup> for females and 40 km<sup>2</sup> for males, on average), they generally do not effectively "control" or limit any undesirable prey populations. This is especially true in urban-suburban areas, which bobcats tend to avoid, so any hypothesized benefit that bobcats could play in reducing the incidence of host species for Lyme disease (i.e., mice and deer) would be negligible.

People who enjoy viewing bobcats in the wild are not likely to be noticeably affected by adoption of these regulation changes. Despite open seasons in eastern New York that have existed for decades, bobcat populations in this region, as indicated by harvest data and observations reported to the Department, have actually increased in number and have expanded their range into areas of New York that were previously unoccupied. We do not expect or intend for the regulation changes to reduce bobcat populations anywhere in the state. Furthermore, whereas trappers and hunters are restricted to harvesting bobcats during only a limited portion of the year, nature enthusiasts can continue to view them year-round, and these diverse interests are not incompatible.

We received no comments on the proposal to eliminate obsolete regulations pertaining to experimental trapping seasons for bobcat and fisher held during the 2006-07 through 2008-09 seasons. Those seasons are no longer in effect and would be inconsistent with bobcat harvest regulations being adopted at this time.

No new scientific evidence or alternative interpretations of data used by DEC to assess the sustainability and impacts of expanded bobcat harvest opportunities were provided during the public comment period. Consequently, the department has determined that it remains appropriate to allow the modification of existing bobcat hunting and trapping seasons and to expand bobcat hunting and trapping opportunity into new regions of the state, so the regulation is being adopted as originally proposed.

## Department of Financial Services

### EMERGENCY RULE MAKING

#### Unauthorized Providers of Health Services

**I.D. No.** DFS-11-13-00008-E

**Filing No.** 540

**Filing Date:** 2013-05-24

**Effective Date:** 2013-05-24

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

**Action taken:** Addition of Subpart 65-5 (Regulation 68-E) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, section 202 and arts. 3 and 4; and Insurance Law, sections 301, 5109 and 5221 and arts. 4 and 51

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** This regulation concerns the de-authorization of certain providers of health services. Insurance Law § 5109(a) requires the Superintendent, in consultation with the Commissioner of Health and the Commissioner of Education, to promulgate standards and procedures for investigating and suspending or removing the authorization for providers of health services to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to Insurance Law § 5109.

For years, certain owners and operators of professional service corporations and other types of corporations have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. Indeed, recent federal indictments have demonstrated that organized crime has infiltrated and permeated the no-fault provider network. Such wide-scale criminal activity is estimated to have defrauded insurers of at least hundreds of millions of dollars, if not more. Insurers ultimately pass on these costs to New York consumers in the form of higher automobile premiums, and schemes such as the fraudulent staging of auto accidents endangers the innocent public. Furthermore, it places in peril the quality of care received by innocent auto accident victims and the public's health, safety, and welfare.

It is of the utmost importance that the Superintendent, Commissioner of Health, and Commissioner of Education be able, as soon as possible, to prohibit health service providers who engage in such activities from demanding or requesting payment from no-fault insurers.

For the reasons stated above, emergency action is necessary for the public health, public safety, and general welfare.

**Subject:** Unauthorized Providers of Health Services.

**Purpose:** Establish standards and procedures for the investigation and suspension or removal of a health service provider's authorization.

**Text of emergency rule:** Section 65-5.0 Preamble.

(a) For years, certain owners and operators of professional service corporations or other similar business entities have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. This fraud costs no-fault insurers tens if not hundreds of millions of dollars, which insurers ultimately pass on to New York consumers in the form of higher automobile insurance premiums. It also threatens the affordability of health care and the public's health, safety, and welfare.

(b) Insurance Law section 5109 requires the Superintendent of Financial Services, in consultation with the Commissioner of Health and the Commissioner of Education, to establish standards and procedures for the investigation and suspension or removal of a provider of health services' authorization to demand or request payment for health services provided under Article 51 of the Insurance Law. This Subpart implements Insurance Law section 5109.

**Section 65-5.1 Definitions.**

As used in this Subpart, the following terms shall have the meaning ascribed to them:

(a) "Health services" or "medical services" means services, supplies, therapies, or other treatments as specified in Insurance Law section 5102(a)(1)(i), (ii), or (iv).

(b) "Insurer" shall have the meaning set forth in Insurance Law section 5102(g), and also shall include the motor vehicle accident indemnification corporation and any company or corporation providing coverage for basic economic loss, as defined in Insurance Law section 5102(a), pursuant to Insurance Law section 5103(g).

(c) "Noticing commissioner" means the Commissioner of Health or the Commissioner of Education, whomever sends a notice of hearing under this Subpart.

(d) "Provider of health services" or "provider" means a person or entity who or that renders health services.

(e) "Superintendent" means the Superintendent of Financial Services.

**Section 65-5.2 Investigations.**

(a) The superintendent may investigate any reports made pursuant to Insurance Law section 405, allegations, or other information in the superintendent's possession, regarding providers of health services engaging in any of the unlawful activities set forth in Insurance Law section 5109(b). After conducting an investigation, the superintendent will send to the Commissioner of Health and the Commissioner of Education a list of any providers who or that the superintendent believes may have engaged in any of the unlawful activities set forth in Insurance Law section 5109(b), together with a description of the grounds for inclusion on the list. Within 45 days of receipt of the list, the Commissioner of Health and Commissioner of Education shall notify the superintendent in writing whether they confirm that the superintendent has a reasonable basis to proceed with notice and a hearing for determining whether any of the listed providers should be deauthorized from demanding or requesting any payment for medical services in connection with any claim under Article 51 of the Insurance Law.

(b) The Commissioner of Health and the Commissioner of Education also may investigate any reports, allegations, or other information in their possession, regarding providers engaging in any of the unlawful activities set forth in Insurance Law section 5109(b). If either commissioner conducts an investigation, then that commissioner, or the superintendent, if requested by the commissioner, shall be responsible for providing notice and an opportunity to be heard to the providers of health services that they are subject to deauthorization from demanding or requesting any payment for medical services in connection with any claim under Article 51 of the Insurance Law. Nothing in this section, however, shall preclude the superintendent, Commissioner of Health, or Commissioner of Education from conducting joint investigations and hearings, or the Commissioner of Health or Commissioner of Education from conducting professional misconduct proceedings against the providers of health services pursuant to the Public Health Law or Title VIII of the Education Law.

**Section 65-5.3 Notice; how given.**

(a)(1) The superintendent, Commissioner of Health, or Commissioner of Education shall give notice of any hearing to a provider at least 30 days prior to the hearing, in writing, either by delivering it to the provider or by depositing the same in the United States mail, postage prepaid, registered or certified, and addressed to the last known place of business of the provider or if no such address is known, then to the residence address of the provider.

(2) The notice shall refer to the applicable provisions of the law under which action is proposed to be taken and the grounds therefor, but failure to make such reference shall not render the notice ineffective if the provider to whom it is addressed is thereby or otherwise reasonably apprised of such grounds.

(3) It shall be sufficient for the superintendent or noticing commissioner to give to the provider:

(i) notice of the time and the place at which an opportunity for hearing will be afforded; and

(ii) if the person appears at the time and place specified in the notice or any adjourned date, a hearing.

(b) At least ten days prior to the hearing date fixed in the notice, the provider may file an answer to any charges with the superintendent or noticing commissioner.

(c) Any hearing of which such notice is given may be adjourned from time to time without other notice than the announcement thereof at such hearing.

(d) The statement of any regular salaried employee of the Department of Financial Services, Department of Health, or Department of Education, subscribed and affirmed by such employee as true under the penalties of perjury, stating facts that show that any notice referred to in this section has been delivered or mailed as hereinbefore provided, shall be presumptive evidence that such notice has been duly delivered or mailed, as the case may be.

**Section 65-5.4 Hearings.**

(a) Unless otherwise provided, any hearing may be held before the superintendent, Commissioner of Health or Commissioner of Education, any deputy, or any designated salaried employee of the Department of Financial Services, Department of Health, or Department of Education

who is authorized by the superintendent or noticing commissioner for such purpose. The hearing shall be noticed, conducted, and administered in compliance with the State Administrative Procedure Act.

(b) The person conducting the hearing shall have the power to administer oaths, examine and cross-examine witnesses, and receive documentary evidence, and shall report his or her findings, in writing, to the superintendent or noticing commissioner with a recommendation. The report, if adopted by the superintendent or noticing commissioner, may be the basis of any determination made by the superintendent or noticing commissioner.

(c) Every such hearing shall be open to the public unless the superintendent or noticing commissioner, or the person authorized by the superintendent or noticing commissioner to conduct such hearing, shall determine that a private hearing would be in the public interest, in which case the hearing shall be private.

(d) Every provider affected shall be permitted to: be present during the giving of all the testimony; be represented by counsel; have a reasonable opportunity to inspect all adverse documentary proof; examine and cross-examine witnesses; and present proof in support of the provider's interest. A stenographic record of the hearing shall be made, and the witnesses shall testify under oath.

(e) Nothing herein contained shall require the observance at any such hearing of formal rules of pleading or evidence.

#### Section 65-5.5 Report of hearing and findings.

(a) Pending a final determination by the superintendent, Commissioner of Health, or Commissioner of Education, if the superintendent or noticing commissioner believes that the provider has engaged in any activity set forth in Insurance Law section 5109(b), then the superintendent or noticing commissioner may temporarily prohibit the provider from demanding or requesting any payment for medical services under Article 51 of the Insurance Law for up to 90 days from the date of the notice of such temporary prohibition pursuant to Insurance Law section 5109(e).

(b) The hearing officer shall issue to the superintendent or noticing commissioner the report described in Section 65-5.4(b) of this Subpart, with a recommendation. The superintendent or noticing commissioner may adopt, modify, remand, or reject the hearing officer's report and recommendation.

(c) Upon consideration of the hearing officer's report and recommendation, the superintendent or noticing commissioner may issue a final order prohibiting the provider from demanding or requesting any payment for medical services in connection with any claim under Article 51 of the Insurance Law and requiring the provider to refrain from subsequently treating, for remuneration, as a private patient, any person seeking medical treatment under Article 51.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-11-13-00008-EP, Issue of March 13, 2013. The emergency rule will expire July 22, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Camielle A. Barclay, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: camielle.barclay@dfs.ny.gov

#### Regulatory Impact Statement

1. Statutory authority: Section 202 and Articles 3 and 4 of the Financial Services Law, and Sections 301, 5109, and 5221 and Articles 4 and 51 of the Insurance Law. Insurance Law § 301 and Financial Services Law §§ 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law. Article 3 of the Financial Services Law sets forth administrative and procedural provisions, while Article 4 of the Financial Services Law confers certain powers and duties on the Superintendent with regard to financial frauds prevention. Insurance Law § 5109 requires the Superintendent to promulgate standards and procedures for investigating and suspending or removing, after notice and a hearing, the authorization of health service providers to bill no-fault insurance if they engage in certain unlawful conduct. Insurance Law § 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation ("MVAIC") with regard to the payment of no-fault benefits to qualified persons. In addition, Article 4 of the Insurance Law sets forth requirements for reporting and preventing fraud, while Article 51 of the Insurance Law governs the no-fault insurance system.

2. Legislative objectives: Insurance Law § 5109 requires the Superintendent, in consultation with the Commissioner of Health and the Commissioner of Education, to promulgate standards and procedures for investigating and suspending or removing the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct

reached after investigation, notice, and a hearing pursuant to § 5109. Furthermore, Insurance Law § 301 and Financial Services Law §§ 202 and 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

3. Needs and benefits: For years, certain owners and operators of professional service corporations and other business entities have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. Indeed, recent federal indictments have demonstrated that organized crime has infiltrated and permeated the no-fault provider network. Such wide-scale criminal activity is estimated to have defrauded insurers of at least hundreds of millions of dollars, if not more. Insurers ultimately pass on these costs to New York consumers in the form of higher automobile insurance premiums, and schemes such as the fraudulent staging of auto accidents endanger the innocent public. Furthermore, these activities place in peril the quality of care received by innocent auto accident victims and the public's health, safety, and welfare.

It is of the utmost importance that the Superintendent, Commissioner of Health, and Commissioner of Education be able, as soon as possible, to prohibit health service providers who engage in such activities from demanding or requesting payment from no-fault insurers.

Therefore, after consultation with the Commissioner of Health and the Commissioner of Education, the Superintendent drafted this rule to promulgate standards and procedures for investigating and suspending or removing the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to § 5109.

4. Costs: This rule does not impose compliance costs on state or local governments. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers. The rule also should reduce costs for New York consumers in the form of reduced automobile insurance premiums.

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

6. Paperwork: This rule does not impose any additional paperwork.

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

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

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

10. Compliance schedule: Insurance Law § 5109(a) requires notice to all health service providers of the provisions of § 5109 and this rule at least 90 days in advance of the effective date of the rule. This rule was initially promulgated on an emergency basis on March 9, 2012, to take effect 95 days after filing with the Secretary of State, i.e., June 12, 2012, and was repromulgated on an emergency basis on June 6, 2012, to take effect on June 12, 2012, and also repromulgated on August 31, 2012, November 28, 2012, and February 25, 2013. A proposed rule also was published in the State Register on March 13, 2013.

The Department provided the required notice by, among other things, posting a copy of the rule on its website on March 9, 2012; emailing notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; and publishing the rule in the State Register on March 29, 2012.

#### Regulatory Flexibility Analysis

1. Effect of the rule: The Department of Financial Services ("Department") finds that this rule will generally not impose reporting, recordkeeping or other requirements on small businesses or local governments. The basis for this finding is that this rule does not impose any substantive requirements on small businesses or local governments. In addition, this rule affects no-fault insurers authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business" because none are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department does not have any information to indicate that any self-insurers are small businesses.

This rule also affects health service providers, some of whom may be considered small businesses. However, this rule does not impose any substantive requirements on health service providers.

Some local governments self-insure their no-fault benefits. The Depart-

ment has not been able to determine the number of local governments that are self-insured. However, this rule does not impose any substantive requirements on local governments, and any impact on local governments would be positive and should reduce their costs.

2. Compliance requirements: This rule does not impose any additional paperwork.

3. Professional services: This rule does not require anyone to use professional services. However, if a health service provider is subject to a hearing, the provider may be represented by counsel.

4. Compliance costs: This rule does not impose compliance costs on small businesses or local governments, because it does not impose any substantive requirements. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers.

5. Economic and technological feasibility: This rule does not impose any substantive requirements on small businesses or local governments, so there should not be any issues pertaining to economic and technological feasibility.

6. Minimizing adverse impact: This rule affects uniformly health service providers and no-fault insurers in all parts of New York State and the rule is mandated by statute. The Department does not believe that it will have an adverse impact.

7. Small business and local government participation: The Department issued a press release regarding the rule on March 8, 2012; posted a copy of the rule on its website on March 9, 2012; emailed notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; and published the rule in the State Register on March 29, 2012. In addition, interested parties were given an opportunity to comment on the proposed regulation that was published in the State Register on March 13, 2013.

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

1. Types and estimated number of rural areas: Health service providers, insurers, and self-insurers affected by this regulation do business in every county in this state, including rural areas as defined under Section 102(10) of the State Administrative Procedure Act. Some of the home offices of these health service providers, insurers, and self-insurers lie within rural areas. Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

2. Reporting, recordkeeping and other compliance requirements: This rule does not impose any additional paperwork.

3. Costs: This rule does not impose compliance costs on state or local governments. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers. The rule also should reduce costs for New York consumers in the form of reduced automobile insurance premiums.

4. Minimizing adverse impact: This rule affects uniformly health service providers and no-fault insurers in both rural and non rural areas of New York State and the rule is mandated by statute. The Department of Financial Services does not believe that it will have an adverse impact on rural areas.

5. Rural area participation: The Department issued a press release regarding the rule on March 8, 2012; posted a copy of the rule on its website on March 9, 2012; emailed notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; and published the rule in the State Register on March 29, 2012. In addition, interested parties were given an opportunity to comment on the proposed regulation that was published in the State Register on March 13, 2013.

#### **Job Impact Statement**

This rule will not have any adverse impact on jobs and employment opportunities of persons engaging in lawful conduct in New York State, because the rule only allows the Superintendent of Financial Services, Commissioner of Health, or Commissioner of Education to investigate and suspend or remove the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to Insurance Law § 5109.

## **EMERGENCY RULE MAKING**

### **License, Financial Responsibility, Education and Test Requirements for Mortgage Loan Originators**

**I.D. No.** DFS-24-13-00002-E

**Filing No.** 537

**Filing Date:** 2013-05-22

**Effective Date:** 2013-05-23

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

**Action taken:** Addition of Part 420; amendment of Supervisory Procedure MB107; and repeal of Supervisory Procedure MB108 of Title 3 NYCRR.

**Statutory authority:** Banking Law, arts. 12-D and 12-E

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

**Specific reasons underlying the finding of necessity:** Article 12-E of the Banking Law provides for the regulation of mortgage loan originators (MLOs). Article 12-E was recently amended in order to conform the regulation of MLOs in New York to new federal legislation (Title V of the Housing and Economic Recovery Act of 2008, known as the "SAFE Act").

The SAFE Act authorized the federal Department of Housing and Urban Development ("HUD") to assume the regulation of MLOs in any state that did not enact acceptable implementing legislation by August 1, 2009. In response, the Legislature enacted revised Article 12-E.

The emergency rulemaking revises the existing MLO regulations, which implement the prior version of Article 12-E, to conform to the changes in the statute.

Under the new legislation, MLOs, including those already engaged in the business of originating mortgage loans, must complete new education, testing and bonding requirements prior to licensure. Meeting these requirements will likely entail significant time and effort on the part of individuals subject to the revised law and regulations.

Emergency adoption of the revised regulations is necessary in order to afford such individuals sufficient advance notice of the new substantive rules and licensing procedures for MLOs that they will have an adequate opportunity to comply with the new licensing requirements and in order to protect against federal preemption of the regulation of MLOs in New York.

**Subject:** License, financial responsibility, education and test requirements for mortgage loan originators.

**Purpose:** To require that individuals engaging in mortgage loan origination activities must be licensed by the Superintendent of Financial Services.

**Substance of emergency rule:** Section 420.1 summarizes the scope and application of Part 420. It notes that all individuals unless exempt must be licensed under Article 12-E to engage in mortgage loan originator ("MLO") activities. It also sets forth the basic authority of the Superintendent to revoke or suspend a license.

Section 420.2 sets out the exemptions available to individuals from the general license requirements. Specifically, the proposed regulation includes a number of exemptions, including exemptions for individuals who work for banking institutions as mortgage loan originators and individuals who arrange mortgage loans for family members. Also, individuals who work for mortgage loan servicers and negotiate loan modifications are only subject to the license requirement if required by HUD. The Superintendent is authorized to approve other exemptions for good cause.

Section 420.3 contains a number of definitions of terms that are used in Part 420. These include definitions for "mortgage loan originator," "originating entity," "residential mortgage loan" and "loan processor or underwriter".

Section 420.4 describes the applications procedures for applying for a license as an MLO. It also provides important transitional rules for individuals already engaging in mortgage loan origination activities pursuant to the authority of the prior version of Article 12-E or, in the case of individuals engaged in the origination of manufactured homes, not previously subject to regulation by the Department of Financial Services (formerly the Banking Department).

Section 420.5 describes the circumstances in which originating entities may employ or contract with MLOs to engage in mortgage loan origination activities during the application process.

Section 420.6 sets forth the steps the Superintendent of Financial Services (formerly the Superintendent of Banks) must take upon determining to approve or disapprove an application for an MLO license.

Section 420.7 describes the circumstances when an MLO license is

inactive and how an MLO may maintain his or her license during such periods.

Section 420.8 sets forth the circumstances when an MLO license may be suspended or terminated. Specifically, the proposed regulation provides that an MLO license shall terminate if the annual license renewal fee has not been paid or the requisite number of continuing education credits have not been taken. The Superintendent also may issue an order suspending an MLO license if the licensee does not file required reports or maintain a bond. The license of an MLO that has been suspended pursuant to this authority shall automatically terminate by operation of law after 90 days unless the licensee has cured all deficiencies within this time period.

Section 420.9 sets forth the process for the annual renewal of an MLO license.

Section 420.10 sets forth the process by which an MLO may surrender his or her license.

Section 420.11 sets forth the pre-licensing educational requirements applicable to applicants seeking an MLO license. Twenty hours of educational courses are required, including courses related to federal law and state law issues.

Section 420.12 sets out the requirement that pre-licensing education and continuing education courses and education course providers must be approved by the Nationwide Mortgage Licensing System and Registry (the "NMLS"). This represents a change from the prior law pursuant to which the Superintendent issued such approvals.

Section 420.13 sets forth the pre-licensing testing requirements for applicants for an MLO license. It also sets out the test location requirements and the minimum passing grades to obtain a license.

Section 420.14 sets out the continuing education requirements applicable to MLOs seeking to renew their licenses.

Section 420.15 sets out the new requirements that MLOs have a surety bond in place as a condition to being licensed under Article 12-E. It also sets out the minimum amounts of such bonds.

Section 420.16 requires the Superintendent to make reports to the NMLS annually regarding violations by, and enforcement actions against, MLOs. It also provides a mechanism for MLOs to challenge the content of such reports.

Section 420.17 sets forth the process for calculating and collecting fees applicable to MLO licensing.

Sections 420.18 and 420.19 set forth the various duties of MLOs and originating entities. Section 420.20 also describes conduct prohibited for MLOs and loan originators.

Finally, Section 420.21 describes the administrative action and penalties that the Superintendent may take against an MLO for violations of law or regulation.

#### Supervisory Procedure MB 107

Section 107.1 contains definitions of defined terms used in the Supervisory Procedure. Importantly, it defines the National Mortgage Licensing System (NMLS), the web-based system with which the Superintendent has entered into a written contract to process applications for initial licensing and applications for annual license renewal for MLOs.

Section 107.2 contains general information about applications for initial licensing and annual license renewal as an MLO. It states that a sample of the application form (which must be completed online) may be found on the Department's website and includes the address where certain information required in connection with the application for licensing must be mailed.

Section 107.3 describes the parts of an application for initial licensing. The application includes (1) the application form, (2) fingerprint cards, (3) the fees, (4) applicant's credit report, (5) an affidavit subscribed under penalty of perjury in the form prescribed by the Superintendent, and (6) any other information that may be required by the Superintendent. It also describes the procedure when the Superintendent determines that the information provided by the application is not complete.

Section 107.4 describes the required submissions for annual license renewal of an MLO.

Section 107.5 covers inactive status.

Section 107.6 provides information on places where applicants may obtain additional instructions and assistance on the Department's website, by email, by mail, and by telephone.

Supervisory Procedure MB 108 is hereby repealed.

**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 August 19, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Sam L. Abram, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@dfs.ny.gov

#### Regulatory Impact Statement

1. Statutory Authority.

Revised Article 12-E of the Banking Law became effective on July 11,

2009 when Governor Paterson signed into law Chapter 123 of the Laws of 2009. The revised version of Article 12-E is modeled on the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act") pertaining to the regulation of mortgage loan originators. Hence, the licensing and regulation of mortgage loan regulators in New York now closely tracks the federal standard.

Current Part 420 of the Superintendent's Regulations, implementing the prior version of Article 12-E, was adopted on an emergency basis in December of 2008. Since the new version of Article 12-E is already effective, it is necessary to revise Part 420 and adopt the revised version on an emergency basis. An earlier draft of this regulation was published on the Department's website on August 27, 2009. To date, the Department has received two sets of comments, and these have been incorporated into the current version of the revised regulation as appropriate.

New Section 599-a of the Banking Law sets forth the legislative purpose of new Article 12-E. It notes that the new Article is intended to enhance consumer protection, reduce fraud and ensure the public welfare. It also notes that the new regulatory scheme is to be consistent with the SAFE Act.

Section 599-b sets forth the definitions used in the new Article. Defined terms include: mortgage loan originator ("MLO"); mortgage loan processor -- an individual who may not need to be licensed; residential mortgage loans -- loans for which an MLO must be licensed; residential real property; and the Nationwide Mortgage Licensing System and Registry (the "NMLS").

Section 599-c sets forth the requirements for being licensed as an MLO, the effective date for licensing and exemptions from the licensing requirements. Exemptions include ones for individuals who work for insured financial institutions, licensed attorneys who negotiate the terms of a loan for a client as an ancillary to the attorney's representation of the client, and, unless required to be licensed by the U.S. Department of Housing and Urban Development ("HUD"), certain individuals employed by a mortgage loan servicer.

Section 599-d sets out the process for obtaining an MLO license. It also sets out the Department's authority for imposing fees, the authority of the NMLS to collect such fees, the ability of the Superintendent of Financial Services (formerly the Superintendent of Banks) to modify the requirements of Article 12-E in order to ensure compliance with the SAFE Act, the requirement that filings be made electronically and required background information from all applicants.

Section 599-e sets forth the findings that the Superintendent must make before a license is issued. These include a finding that the applicant not have any felony convictions within seven years or any fraud convictions at any time, that the applicant demonstrate acceptable character and fitness, educational and testing criteria and a bonding requirement. An MLO also must be affiliated with an originating entity -- a licensed mortgage banker or registered mortgage broker (or other licensed entity in the case of individuals originating manufactured homes) -- or working for mortgage loan servicers.

Section 599-f sets out the pre-licensing education requirements, and Section 599-g sets forth the pre-licensing testing requirements. Section 599-h imposes a reporting requirement on entities employing MLOs. Such entities must make annual filings through the NMLS.

Section 599-i sets forth the annual license renewal requirements for MLOs. In addition to continuing to satisfy the initial requirements for licensing, MLOs must satisfy annual continuing educational requirements and must have paid all fees. Failure to meet these requirements shall result in the automatic termination of an MLO's license. The statute also provides for a licensee going into inactive status, provided the individual continues to pay all applicable fees and to take required education courses.

Section 599-j sets forth the continuing education requirements for MLOs, and Section 599-k sets forth the requirements for a surety bond. Section 599-l requires the Superintendent to report through the NMLS at least annually on all violations of Article 12-E and all enforcement actions. MLOs may challenge the information contained in such reports. Section 599-m sets forth the records and reports that originating entities must maintain or make on MLOs employed by, or working for, such entities. This section also requires the Superintendent to maintain on the internet a list of all MLOs licensed by the Department and requires reporting to the Department by MLOs.

Section 599-n sets forth the enforcement authority of the Superintendent. In addition to "for good cause" suspension authority, the Superintendent may revoke a license for stated reasons (after a hearing), and the Superintendent may suspend a license if a required surety bond is allowed to lapse or thirty days after a required report is not filed. This section also sets out the requirements for surrendering a license and the implications of any surrender, revocation, termination or suspension of a license.

Section 599-o sets forth the authority of the Superintendent to adopt

rules and regulations implementing Article 12-E, including the authority to adopt expedited review and licensing procedures for individuals previously authorized under the prior version of Article 12-E to act as MLOs. It also authorizes the Superintendent to investigate licensees and the entities with which they are associated.

Section 599-p requires that the unique identifier of every originator be clearly shown on certain documents. Section 599-q provides certain confidentiality protections for information provided to the Superintendent by an MLO, notwithstanding the sharing of such information with other regulatory bodies.

#### 2. Legislative Objectives.

As noted, new Article 12-E was intended to conform New York Law to federal law and to enhance the regulation of MLOs operating in this state. These objectives have taken on increased urgency with the problems evidenced in the mortgage banking industry over the past few years.

The regulations implement this statute. New Part 420 differs from the prior version in a number of respects. The following is a summary of the major changes from the previous regulation:

1. The definition of a mortgage loan originator is broadened to include any individual who takes a mortgage application or offers or negotiates the terms of the mortgage with a consumer.

2. Individuals who originate loans on manufactured homes will be subject to the regulation for the first time.

3. If licensing of individuals who work for mortgage loan servicers and who engage in loan modification activities is required by the U.S. Department of Housing and Urban Development, such individuals may be subject to the licensing requirements of the new law and to the new regulation.

4. Individuals who have applied for "authorization" under the prior version of Article 12-E and Part 420 have a simplified process for becoming licensed and may continue to originate loans until they are licensed under the revised regulation or their applications are denied.

5. Individuals with a felony conviction within the last seven years or a felony conviction for fraud at any time are now prohibited from being licensed as MLOs in New York State.

6. Individuals must satisfy new pre-license education and testing requirements. There also are new bonding requirements and continuing education requirements.

7. A license automatically terminates if the licensee does not pay his or her annual license renewal fee or take the requisite amount of continuing education credits. The authority of the Superintendent to suspend an individual for good cause also has been clarified.

When Part 420 was originally adopted on an emergency basis, the Superintendent also adopted Supervisory Procedures MB 107 and MB 108. Supervisory Procedure MB107 deals with applications to become an MLO. It has been updated in line with the revisions to Article 12-E and Part 420.

Supervisory Procedure MB 108, relating to the approval of education providers and courses, was originally adopted because the prior version of Article 12-E required the Superintendent to approve both courses and providers. This activity has been transferred to the NMLS under new Article 12-E. Accordingly, Supervisory Procedure MB 108 is being rescinded.

#### 3. Needs and Benefits.

The SAFE Act is intended to impose a nationwide standard for MLO regulation; new Article 12-E constitutes New York's effort to adopt a regulatory regime consistent with this uniform standard. This regulation is needed to implement revised Article 12-E and is necessary to address problems that have surfaced over the last several years in the mortgage industry.

As has now been recognized at the federal level in the SAFE Act, increased oversight of mortgage loan originators is necessary to curb disreputable and deceptive businesses practices by MLOs. Individuals engaging in abusive practices have avoided detection by moving from company to company and in some instances, from state to state. The licensing of MLOs will greatly assist the Department in its efforts to oversee the mortgage industry and protect consumers. The regulation will enable the Department to identify, track and hold accountable those individuals who engage in abusive practices, and ensure continuing education for all MLOs that are licensed by the Department.

These regulatory requirements will improve accountability among mortgage industry professionals, protect and promote the integrity of the mortgage industry, and improve the quality of service, thereby helping to restore consumer confidence.

If New York did not adopt the new federal standards for MLO regulation or failed to implement its requirements, the SAFE Act requires that HUD assume the licensing of MLOs in New York State. This would result in ceding an important responsibility and element of state sovereignty to the federal government.

#### 4. Costs.

MLOs are already experiencing increased costs as a result of the fees

and continuing education requirements associated with the prior version of Article 12-E. These costs will continue under the new law and regulations.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry are set by that body.

The ability by the Department to regulate MLOs is expected to substantially decrease losses to consumers and the mortgage industry, as well as to assist in decreasing the number of foreclosures in the State and the associated direct and indirect costs of such foreclosures. It is expected also to reduce consumer complaints regarding MLO conduct.

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.

An application process has been established for MLOs electronically through the NMLS. Over time, the application process is expected to become virtually paperless; accordingly, while a limited number of documents, including fingerprints where necessary, currently have to be submitted to the Department in paper form, these requirements should diminish with the passage of time.

The specific procedures that are to be followed in order to apply for licensing as a mortgage loan originator are detailed in revised Supervisory Procedure MB 107.

#### 7. Duplication.

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

#### 8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to license and regulate MLOs in a manner consistent with the SAFE Act. As noted above, the alternative would be to cede this responsibility to the federal government. By enacting revised Article 12-E, the Legislature has indicated its desire to retain this responsibility at the state level.

#### 9. Federal Standards.

Currently, mortgage loan originators are required under the SAFE Act to be licensed under requirements nearly identical to those set forth in new Article 12-E.

#### 10. Compliance Schedule.

New Article 12-E became effective on July 11, 2009.

A transitional period is provided for mortgage loan originators who, as of July 11, 2009, were authorized to act as MLOs or had filed applications to be so authorized. Such MLOs may continue to engage in MLO activities, provided they submit any additional, updated information required by the Superintendent. The transitional period runs until January 1, 2011, in the case of authorized persons, and until July 31, 2010, in the case of applicants (unless their applications are denied or withdrawn as of an earlier date). Applicants are required to complete their applications considerably in advance of these dates under the regulations in order to allow the Department to complete their processing.

#### *Regulatory Flexibility Analysis*

##### 1. Effect of the Rule:

The revised regulation will not have any impact on local governments. However, many of the originating entities who employ or are affiliated with mortgage loan originators are mortgage bankers or mortgage brokers who are considered small businesses. In excess of 2,700 of these businesses are licensed or registered by the Department of Financial Services (formerly the Banking Department).

##### 2. Compliance Requirements:

The revised regulation reflects the changes made in revised Article 12-E of the Banking Law. The small businesses that MLOs are employed by or affiliated with will be required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for actual or alleged violations, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. In addition to these requirements, originating entities will be required to assign MLOs to registered locations and to ensure that an MLO's unique identifier is recorded on each mortgage application he or she originates.

##### 3. Professional Services:

None.

##### 4. Compliance Costs:

As under the existing Part 420, some mortgage entities may choose to pay for costs associated with initial licensing and annual license renewal

for their MLOs and with continuing education requirements, but are not required to do so. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education are expected to be minimal.

**5. Economic and Technological Feasibility:**

The rule-making should impose no adverse economic or technological burden on small businesses that MLOs are employed by or affiliated with.

**6. Minimizing Adverse Impacts:**

The industry, and specifically small businesses who are licensed and registered mortgage businesses, supported passage of the previous Banking Law Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulations. In addition, these businesses were involved in a policy dialogue with the Department during rule development. In order to minimize any potential adverse economic impact of the rulemaking, outreach was conducted with associations representing the industries that would be affected thereby (mortgage bankers, and mortgage brokers).

The revised regulation implements changes in Article 12-E of the Banking Law. An earlier draft of the revised regulation was published on the Department's website on August 27, 2009. Changes incorporating the comments have been made in the regulation where appropriate.

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

See response to Item 6 above.

**Rural Area Flexibility Analysis**

**Types and Estimated Numbers.** The New York State Department of Financial Services (formerly the Banking Department) licenses over 1,045 mortgage bankers and brokers, of which over 761 are located in the state. It has received 19,000 applications from MLOs under the present regulations and anticipates receiving approximately 500 initial licensing applications from individuals who seek to enter and/or re-enter the market as the economy stabilizes. Many of these entities and MLOs will be operating in rural areas of New York State and would be impacted by the regulation.

**Compliance Requirements.** Mortgage loan originators in rural areas must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks) to engage in the business of mortgage loan origination. The application process established by the regulations requires an MLO to apply for a license electronically and to submit additional background information to the Mortgage Banking unit of the Department. This additional information consists of fingerprints, a recent credit report, supplementary background information and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for cause, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. The Department believes that this rule will not impose a burdensome set of requirements on entities operating in rural areas.

**Costs.** Some mortgage businesses in rural areas may choose to pay the increased costs associated with the continuing education requirements and the fees associated with licensing and annual renewal of their MLOs, but are not required to do so. The regulation sets forth the manner in which the background investigation fee, the initial license processing fee and the annual renewal fee are established. There will also be a fee for the processing of fingerprints and fees to cover the cost of third party processing of the application. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out its regulatory responsibilities. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education courses are expected to be minimal. The cost of continuing education is estimated to be approximately \$500 every two years. The Department's increased effectiveness in fighting mortgage fraud and predatory lending will lower costs related to litigation and will decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

**Minimizing Adverse Impacts.** The industry supported passage of the prior Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, the industry was involved in a dialogue with the Department during rule development.

The revised regulations implement revised Article 12-E of the Banking Law, which in turn closely tracks the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act"). Hence, the licensing and regulation of mortgage loan originators in New York now closely tracks the federal standard. If New York did not adopt this standard, the SAFE Act requires that the federal Department of Housing and Urban Development assume the licensing of MLOs in New York State.

**Rural Area Participation.** Representatives of various entities, including mortgage bankers and brokers conducting business in rural areas and entities that conduct mortgage originating in rural areas, participated in outreach meetings that were conducted during the process of drafting the prior Article 12-E and the implementing regulations. As noted above, the revised statute and regulations closely track the provisions of the federal SAFE Act.

**Job Impact Statement**

Revised Article 12-E of the Banking Law, effective on July 11, 2009, replaces the prior version of Article 12-E with respect to the licensing and regulation of mortgage loan servicers. This regulation sets forth the application, exemption and approval procedures for licensing registration as a Mortgage Loan Originator (MLO), as well as financial responsibility requirements for individuals engaging in MLO activities. The regulation also provides transition rules for individuals who engaged in MLO activities under the prior version of the article to become licensed under the new statute.

The requirement to comply with the regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. This is because individuals were already subject to regulation under the prior version of Article 12-E of the Banking Law. New Article 12-E and Part 420 are intended to conform to the regulation of MLOs to the requirements of federal law. Absent action by New York to conform this regulation to federal requirements, federal law authorized the Department of Housing and Urban Affairs to take control of the regulation of MLOs in New York State.

As with their predecessors, the new statute and regulations require the use of the internet-based National Mortgage Licensing System and Registry (NMLS), developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for MLO registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory licensing requirement rather than the provisions of the regulations.

Supervisory Procedure 108 relates to the approval by the Superintendent of Financial Services (formerly the Superintendent of Banks) of educational courses and course providers for MLOs. Under revised Article 12-E, this function has been transferred to the NMLS. Moreover, educational requirements have been increased under the new law and regulation by the Superintendent.

**EMERGENCY  
RULE MAKING**

**Unfair Claims Settlement Practices and Claim Cost Control Measures**

**I.D. No.** DFS-24-13-00003-E

**Filing No.** 538

**Filing Date:** 2013-05-24

**Effective Date:** 2013-05-24

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

**Action taken:** Amendment of Part 216 (Regulation 64) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 2601

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, will constitute unfair claims settlement practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe to settle claims properly.

On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a large number of claims left to settle. As a result, many homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Moreover, there are many insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Fair and prompt settlement of claims is critical for homeowners, many of whom have been displaced from their homes or are living in unsafe conditions, and for small businesses, many of which have yet to return to full operation and to recover their losses caused by the storm.

Given the nature and extent of the damage, an alternative avenue to mediate the claims would help protect the public and ensure its safety and welfare.

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

**Subject:** Unfair Claims Settlement Practices and Claim Cost Control Measures.

**Purpose:** To create a mediation program to facilitate the negotiation of certain insurance claims arising between 10/26/12 - 11/15/12.

**Text of emergency rule:** 216.13 Mediation.

(a) This section shall apply to any claim for loss or damage, other than claims made under flood policies issued under the national flood insurance program, occurring from October 26, 2012 through November 15, 2012, in the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk or Westchester, including their adjacent waters, with respect to:

- (1) loss of or damage to real property; or
- (2) loss of or damage to personal property, other than damage to a motor vehicle.

(b)(1) Except as provided in paragraph (2) of this subdivision, an insurer shall send the notice required by paragraph (3) of this subdivision to a claimant, or the claimant's authorized representative:

- (i) at the time the insurer denies a claim in whole or in part;
- (ii) within 10 business days of the date that the insurer receives notification from a claimant that the claimant disputes a settlement offer made by the insurer, provided that the difference between the positions of the insurer and claimant is \$1,000 or more; or
- (iii) within two business days when the insurer has not offered to settle within 45 days after it has received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant.

(2) If, prior to the effective date of this section: the insurer denied a claim in whole or in part; or a claimant disputed a settlement offer, or more than 45 days elapsed after the insurer received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant, and in either case the claim still remains unresolved as of the effective date of this section, then the insurer shall provide the notice required by paragraph (3) of this subdivision within ten business days from the effective date of this section.

(3) The notice specified in paragraphs (1) and (2) of this subdivision shall inform the claimant of the claimant's right to request mediation and shall provide instructions on how the claimant may request mediation, including the name, address, phone number, and fax number of an organization designated by the superintendent to provide a mediator to mediate claims pursuant to this section. The notice shall also provide the insurer's address and phone number for requesting additional information.

(c) If the claimant submits a request for mediation to the insurer, the insurer shall forward the request to the designated organization within three business days of receiving the request.

(d) The insurer shall pay the designated organization's fee for the mediation to the designated organization within five days of the insurer receiving a bill from the designated organization.

(e)(1) The mediation shall be conducted in accordance with procedures established by the designated organization and approved by the superintendent.

(2) A mediation may be conducted by face-to-face meeting of the parties, videoconference, or telephone conference, as determined by the designated organization in consultation with the parties.

(3) A mediation may address any disputed issues for a claim to which this section applies, except that a mediation shall not address and the insurer shall not be required to attend a mediation for:

- (i) a dispute in property valuation that has been submitted to an appraisal process or a claim that is the subject of a civil action filed by the insured against the insurer, unless the insurer and the insured agree otherwise;

(ii) any claim that the insurer has reason to believe is a fraudulent transaction or for which the insurer has knowledge that a fraudulent insurance transaction has taken place; or

(iii) any type of dispute that the designated organization has excepted from its mediation process in accordance with the organization's procedures approved by the superintendent.

(f)(1) The insurer must participate in good faith in all mediations scheduled by the designated organization, which shall at a minimum include compliance with paragraphs (2), (3), and (4) of this subdivision.

(2) The insurer shall send a representative to the mediation who is knowledgeable with respect to the particular claim; and who has authority to make a binding claims decision on behalf of the insurer and to issue payment on behalf of the insurer. The insurer's representative must bring a copy of the policy and the entire claims file, including all relevant documentation and correspondence with the claimant.

(3) An insurer's representatives shall not continuously disrupt the process, become unduly argumentative or adversarial or otherwise inhibit the negotiations.

(4) An insurer that does not alter its original decision on the claim is not, on that basis alone, failing to act in good faith if it provides a reasonable explanation for its action.

(g) An insured's right to request mediation pursuant to this section shall not affect any other right the insured may have to redress the dispute, including remedies specified in the insurance policy, such as an insured's right to request an appraisal, the right to litigate the dispute in the courts if no agreement is reached, or any right provided by law.

(h)(1) No organization shall be designated by the superintendent unless it agrees that:

(i) the superintendent shall oversee the operational procedures of the designated organization with respect to administration of the mediation program, and shall have access to all systems, databases, and records related to the mediation program; and

(ii) the organization shall make reports to the superintendent in whatever form and as often as the superintendent prescribes.

(2) No organization shall be designated unless its procedures, approved by the superintendent, require that:

(i) the parties agree in writing prior to the mediation that statements made during the mediation are confidential and will not be admitted into evidence in any civil litigation concerning the claim, except with respect to any proceeding or investigation of insurance fraud;

(ii) a settlement agreement reached in a mediation shall be transcribed into a written agreement, on a form approved by the superintendent, that is signed by a representative of the insurer with the authority to do so and by the claimant; and

(iii) a settlement agreement prepared during a mediation shall include a provision affording the claimant a right to rescind the agreement within three business days from the date of the settlement, provided that the insured has not cashed or deposited any check or draft disbursed to the claimant for the disputed matters as a result of the agreement reached in the mediation.

(3) No organization shall be designated unless its procedures, approved by the superintendent, provide that:

(i) the mediator may terminate a mediation session if the mediator determines that either the insurer's representative or the claimant is not participating in the mediation in good faith, or if even after good faith efforts, a settlement can not be reached;

(ii) the designated organization may schedule additional mediation sessions if it believes the sessions may result in a settlement;

(iii) the designated organization may require the insurer to send a different representative to a rescheduled mediation session if the representative has not participated in good faith, the fee for which shall be paid by the insurer; and

(iv) the designated organization may reschedule a mediation session if the mediator determines that the claimant is not participating in good faith, but only if the claimant pays the organization's fee for the mediation.

**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 August 21, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Brenda Gibbs, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 408-3451, email: [brenda.gibbs@dfs.ny.gov](mailto:brenda.gibbs@dfs.ny.gov)

#### Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law and Sections 301 and 2601 of the Insurance Law. Financial Services Law § 202 grants the Superintendent of Financial Services ("Superintendent") the rights, powers, and duties in connection with financial services

and protection in this state, expressed or reasonably implied by the Financial Services Law or any other applicable law of this state. Insurance Law § 301 and Financial Services Law § 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent in the Insurance Law. Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices, sets forth certain acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, constitute unfair claims settlement practices, and imposes penalties if an insurer engages in these acts. Such practices include “not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear” and “compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.”

2. Legislative objectives: As noted in the Department’s statement in support for the bill that added the predecessor section to § 2601, Section 40-d, to the Insurance Law in 1970 (Chapter 296 of the Laws of 1970), an insurance company’s obligation to deal fairly with claimants and policyholders in the settlement of claims – indeed, its simple obligation to pay claims at all – was solely a matter of private contract law. That left the Department unable to aid consumers and relegated them solely to the courts. There was a wide variety in insurers’ claims practices. Insurance Law § 2601 reflects the Legislature’s concerns with insurance claims practices of insurers. In enacting that section, the Legislature authorized the Superintendent to monitor and regulate insurance claims practices.

3. Needs and benefits: On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor’easter struck New York just a week later, adding to the damage and displacement. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a large number of claims left to settle. As a result, many homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Many small businesses have suffered losses of income that threaten their survival. Fair and prompt settlement of claims is critical for homeowners, many of whom who have been displaced from their homes or who are living in unsafe conditions, and for small businesses, to enable them to return to full operation and to recover their losses caused by the storm. Furthermore, many small businesses provide essential services to and a significant source of employment in the communities in which they are located.

Moreover, there are many insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Therefore, this rule creates a mediation program to facilitate the negotiation of certain insurance claims arising in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, between October 26, 2012 and November 15, 2012. An insured may request mediation for a claim for loss or damage to personal or real property (1) that the insurer has denied, (2) for which the insured disputes the insurer’s settlement offer if the difference between what the insured seeks and the insurer offers is more than \$1,000, or (3) that has not been settled within 45 days after the insurer received all the information the insurer needs to decide the claim. The amendment does not provide for mediation of claims for damage to motor vehicles.

Participation in the mediation program by insureds is voluntary. Participation by insurers in the mediation program is mandatory, except that an insurer is not required to participate in a mediation for any claim involving a dispute in property valuation that has been submitted to an appraisal process or that has become the subject of civil litigation, unless the insurer and insured agree otherwise. An insurer also is not required to mediate any claim for which the insurer has reason to believe or knowledge that a fraudulent insurance transaction has taken place.

4. Costs: This rule does not impose compliance costs on state or local governments. The rule may increase costs for insurers, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers should also realize savings from mediations that result in settle-

ments because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

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

6. Paperwork: This rule does not impose any additional paperwork.

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

8. Alternatives: The Department considered making this rule applicable to the entire state. However, since the major concerns appeared to be localized, the applicability of the amendment is limited to those counties most impacted by the storm. In addition, the Department could have made the rule apply to all claims, even those that had been settled before the effective date of the rule. However, after meeting with industry trade groups and hearing their concerns, the Department modified the rule to make clear that, for claims that had already been made as of the rule’s effective date, only those that were denied or unresolved as of the rule’s effective date are covered by the rule. The Department also changed the rule so that it applies only to disputes where the parties’ positions are \$1,000 or more apart.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements. The regulation does not apply to claims made under policies issued under the national flood insurance program.

10. Compliance schedule: Insurers will be required to comply with this rule upon the Superintendent’s filing the rule with the Secretary of State.

#### **Regulatory Flexibility Analysis**

1. Small businesses: The Department of Financial Services (“Department”) finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers authorized to do business in New York State, none of which fall within the definition of a “small business” as found in State Administrative Procedure Act § 102(8). The Department has monitored annual statements and reports on examination of authorized insurers subject to this rule, and believes that none of the insurers falls within the definition of “small business” because no insurer is both independently owned and has fewer than 100 employees.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at authorized insurers, which are not local governments.

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

1. Types and estimated numbers of rural areas: “Rural areas”, as used in State Administrative Procedure Act (“SAPA”) § 102(10), means counties within the state having less than 200,000 population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of 200,000 or greater population, “rural areas” means towns with population densities of 150 persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein. While insurers affected by this rule may be headquartered in rural areas, the rule itself only applies within the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange. None of these counties is a rural area, and the Department of Financial Services (“Department”) does not believe that there are any towns within any of those counties that would be considered to be rural areas within the SAPA definition.

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule would not impose any additional reporting or recordkeeping requirements. However, the rule would impose other compliance requirements on insurers that may be headquartered in rural areas by requiring insurers to participate in mediation sessions when an insured with a claim subject to the rule requests mediation of his or her claim.

It is unlikely that professional services would be needed in rural areas to comply with this rule.

3. Costs: The rule may result in additional costs to insurers headquartered in rural areas, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers may also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by

insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

4. Minimizing adverse impact: The Department considered the approaches suggested in SAPA § 202-bb(2) for minimizing adverse economic impacts. Because the public health, safety, or general welfare has been endangered, establishment of differing compliance or reporting requirements or timetables based upon whether or not the damage occurred in a rural area is not appropriate. However, the rule applies only in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, and thus the impact of the rule on rural areas is minimized, since none of those counties are rural areas.

5. Rural area participation: Public and private interests in rural areas had an opportunity to participate in the rule making process when the emergency measure was published in the March 13, 2013 State Register, which was also posted on the Department's website.

#### **Job Impact Statement**

The Department of Financial Services does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities. This rule provides insureds with open or denied claims for loss or damage to personal and real property, except damage to automobiles, arising in New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange counties between October 26, 2012 and November 15, 2012, with an option to participate in a mediation program to facilitate the negotiation of their claims with their insurers.

### **EMERGENCY RULE MAKING**

#### **Unfair Claims Settlement Practices and Claim Cost Control Measures**

**I.D. No.** DFS-24-13-00004-E

**Filing No.** 539

**Filing Date:** 2013-05-24

**Effective Date:** 2013-05-24

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

**Action taken:** Amendment of Part 216 (Regulation 64) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 2601 and 3404(e)

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, will constitute unfair claims settlement practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe to settle claims properly.

On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. Just a week later, a nor'easter hit the State, causing further damage. The counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange suffered the greatest damage from Storm Sandy and the nor'easter.

Insurers insuring property in affected areas have not always begun investigating claims, including by deploying insurance adjusters to adjust the claims, in a prompt manner. As a result, homeowners and small business owners have not always been able to start to repair or replace their damaged property. In addition, even though several months have now passed since the storms, claimants still are filing claims, and many claims previously filed are still pending with insurers. It is of the utmost importance that homeowners and small business owners be able to start

rebuilding their homes and businesses right away and, if there are legitimate reasons for any delay in making payments, the insurer should apprise the claimant on a regular basis of those reasons.

Given the nature and extent of the damage, the existing regulation's time frames were and remain inadequate to protect the public and ensure its safety and welfare.

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

**Subject:** Unfair Claims Settlement Practices and Claim Cost Control Measures.

**Purpose:** To ensure timely claims investigation and resolution, permit certain immediate repairs when needed to protect health or safety.

**Text of emergency rule:** Section 216.5(a) is amended to read as follows:

(a)(1) Every insurer shall [establish procedures to] commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within 15 business days of receiving notice of claim. An insurer shall furnish to every claimant, or claimant's authorized representative, a notification of all items, statements and forms, if any, which the insurer reasonably believes will be required of the claimant, within 15 business days of receiving notice of the claim. A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, such agent notifies the person filing the claim that the agent is not authorized to receive notices of claim.

(2)(i) Notwithstanding paragraph one of this subdivision, the provisions of this paragraph shall apply to any claim filed on or after November 29, 2012 for loss, damage, or liability for loss, damage, or injury, occurring from October 26, 2012 through November 15, 2012, in the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk or Westchester, including their adjacent waters, with respect to:

(a) loss of or damage to real property;

(b) loss of or damage to personal property; or

(c) other liabilities for loss of, damage to, or injury to persons or property.

(ii) Every insurer shall commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within six business days of receiving notice of claim. If the insurer wishes its investigation to include an inspection of the damaged or destroyed property, the inspection, whether performed by the insurer, an independent adjuster, or other representative of the insurer, must occur within the time frames specified in this paragraph.

(iii) An insurer shall furnish to every claimant, or claimant's authorized representative, a written notification detailing all items, statements and forms, if any, that the insurer reasonably believes will be required of the claimant, within six business days of receiving notice of the claim.

(iv) A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, the agent notifies the person filing the claim that the agent is not authorized to receive notices of claim.

(v) Where necessary to protect health or safety, a claimant may commence immediate repairs to heating systems, hot water systems, and necessary electrical connections, as well as exterior windows, exterior doors, and, for minor permanent repairs, exterior walls, in order to enable property to retain heat, and any policy requirement that the policyholder exhibit the remains of the property may be satisfied by the policyholder submitting proof of loss documentation of the damaged or destroyed property, including photographs or video recordings; material samples, if applicable; and inventories, as well as receipts for any repairs to or replacement of property. This subparagraph does not apply to claims under flood policies issued under the national flood insurance program.

Section 216.6(c) is amended to read as follows:

(c)(1) Within 15 business days after receipt by the insurer of a properly executed proof of loss and receipt of all items, statements and forms which the insurer requested from the claimant, the claimant, or the claimant's authorized representative, shall be advised in writing of the acceptance or rejection of the claim by the insurer. When the insurer suspects that the claim involves arson, the foregoing 15 business days shall be read as 30 business days pursuant to section 2601 of the Insurance Law.

(2) If the insurer needs more time to determine whether the claim should be accepted or rejected, it shall so notify the claimant, or the claimant's authorized representative, within 15 business days after receipt of such proof of loss, or requested information. Such notification shall include the reasons additional time is needed for investigation. If the claim remains unsettled, unless the matter is in litigation or arbitration, the insurer shall, 90 days from the date of the initial letter setting forth the need for further time to investigate, and every 90 days thereafter, send to the claimant, or the claimant's authorized representative, a letter setting

forth the reasons additional time is needed for investigation. If the claim is accepted, in whole or in part, the claimant, or the claimant's authorized representative, shall be advised in writing of the amount offered. In any case where the claim is rejected, the insurer shall notify the claimant, or the claimant's authorized representative, in writing, of any applicable policy provision limiting the claimant's right to sue the insurer.

(3)(i) *Notwithstanding paragraph two of this subdivision, the provisions of this paragraph shall apply to any claim for loss, damage, or liability for loss, damage, or injury, occurring from October 26, 2012 through November 15, 2012 in the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk or Westchester, including their adjacent waters, with respect to:*

(a) *loss of or damage to real property;*

(b) *loss of or damage to personal property; or*

(c) *other liabilities for loss of, damage to, or injury to persons or property.*

(ii) *If the insurer needs more time to determine whether the claim should be accepted or rejected, it shall so notify the claimant, or the claimant's authorized representative, in writing, within 15 business days after receipt of such proof of loss, or requested information. Such notification shall include the reasons additional time is needed for investigation and the anticipated date a determination on the claim will be provided. If the claim remains unsettled, unless the matter is in litigation or arbitration, the insurer shall, 30 days from the date of the initial letter setting forth the need for further time to investigate, and every 30 days thereafter, send to the claimant, or the claimant's authorized representative, a letter setting forth the reasons additional time is needed for investigation and the anticipated date a determination on the claim will be provided. If the claim is accepted, in whole or in part, the claimant, or the claimant's authorized representative, shall be advised in writing of the amount offered. If the insurer rejects a claim subject to clause (a) or (b) of subparagraph (i) of this paragraph, the insurer shall notify the claimant, or the claimant's authorized representative, in writing, of any applicable policy provision limiting the claimant's right to sue the insurer.*

(iii) *If an insurer has any claim subject to this paragraph under which the claimant, or the claimant's authorized representative, has not been advised in writing of the insurer's acceptance or rejection of the claim within the time frames specified in paragraph (1) of this subdivision, the insurer shall submit a report to the superintendent in a form acceptable to the superintendent. The insurer shall submit the report each week that the insurer has any such claims. The insurer shall submit the report on the Tuesday of the week, except if that day is a holiday, then the report shall be submitted on the next business day. For each such claim, the insurer shall specify:*

(a) *the date the loss was alleged to have occurred;*

(b) *the date the claim was filed with the insurer;*

(c) *the date a properly executed proof of loss and receipt of all items, statements and forms required by the insurer were received by the insurer;*

(d) *the alleged estimated amount of the loss;*

(e) *the reason given for the extension;*

(f) *the anticipated date a determination will be made on the claim provided to the claimant;*

(g) *how many extensions have been requested on that claim;*

and

(h) *the zip code where the loss occurred.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 21, 2013.

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

#### **Regulatory Impact Statement**

1. Statutory authority: Sections 202 and 302 of the Financial Services Law and Sections 301, 2601, and 3404(e) of the Insurance Law. Financial Services Law § 202 grants the Superintendent of Financial Services ("Superintendent") the rights, powers, and duties in connection with financial services and protection in this state expressed or reasonably implied by the Financial Services Law or any other applicable law of this state. Insurance Law § 301 and Financial Services Law § 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law. Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices; sets forth certain acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, constitute unfair claims settlement practices; and imposes penalties if an insurer engages in these acts. Insurance Law § 3404(e) sets forth the form of the standard fire insurance policy (which may be substituted for another policy form

provided that, with respect to the peril of fire, terms and provisions are no less favorable to the insured). This form requires an insured to protect the insured's property from further damage.

2. Legislative objectives: As noted in the Department's statement in support for the bill that added the predecessor section to Insurance Law § 2601, Section 40-d, to the Insurance Law in 1970 (Chapter 296 of the Laws of 1970), an insurance company's obligation to deal fairly with claimants and policyholders in the settlement of claims – indeed, its simple obligation to pay claims at all – was solely a matter of private contract law. That left the Department unable to aid consumers and relegated them solely to the courts. There was a wide variety in insurers' claims practices. Insurance Law § 2601 reflects the Legislature's concerns with the insurance claims practices of insurers. One particular concern noted by the Department in its memorandum was that insurers often failed to adequately communicate with insureds. In enacting the section, the Legislature authorized the Superintendent to monitor and regulate insurance claims practices in New York and to help ensure that insurers would not engage in unfair claims settlement practices.

3. Needs and benefits: On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services, such as electric power, restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have not always investigated or resolved all claims, including by deploying insurance adjusters to adjust the claims, in a prompt manner. In addition, even though several months have now passed since the storms, claimants still are filing claims, and many claims previously filed are still pending with insurers. As a result, many homeowners and small business owners have not been able to start to repair or replace their damaged property. It is of the utmost importance that homeowners and small business owners be able to start to rebuild their homes and businesses right away.

Therefore, with respect to New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, this rule reduces the number of days within which an insurer must commence an investigation of a claim upon receiving notice of the claim and, if the insurer wishes its investigation to include an inspection of the damaged or destroyed property, requires that the inspection, whether performed by the insurer, an independent adjuster, or other representative of the insurer, occur within the prescribed time frames. In addition, the rule clarifies that, where necessary to protect health or safety, a claimant may commence immediate repairs to heating systems, hot water systems, and necessary electrical connections, as well as to exterior windows, exterior doors, and, for minor permanent repairs, exterior walls, in order to enable property to retain heat. The rule also clarifies that a policyholder may satisfy any policy requirement that the policyholder exhibit the remains of the property by submitting proof of loss documentation of the damaged or destroyed property, including photographs or video recordings; material samples, if applicable; and inventories, as well as receipts for any repairs to or replacement of property. The clarification regarding repairs does not apply to claims made under flood policies issued pursuant to the national flood insurance program.

Furthermore, the rule addresses concerns where claims remain open for an extended period of time. Under existing Insurance Regulation 64, if a claim remains unsettled, an insurer must, every 90 days, send to the claimant, or the claimant's representative, a letter setting forth the reasons additional time is needed for investigation. This rule requires an insurer to send a claimant a letter every 30 days, rather than 90 days, with regard to any claim for loss, damage, or liability for loss, damage, or injury, occurring from October 26, 2012 through November 15, 2012 in certain counties, thereby providing the claimant with more timely updates. The update shall also indicate the anticipated date that a determination will be provided. If a first-party claim for property damage is rejected, the insurer shall notify the claimant of any applicable policy provision limiting the claimant's right to sue the insurer. In addition, the rule requires the insurer to file weekly with the Superintendent a report whenever the insurer has not advised the claimant of the insurer's acceptance or rejection of the claim within 15 days of receipt of proof of loss (or 30 days where the insurer suspects arson.)

4. Costs: This rule does not impose compliance costs on state or local governments. The rule may increase costs for insurers, because they may need to hire additional staff to comply with the reduced time period within

which they must commence an investigation. Moreover, insurers will have to provide more frequent updates to claimants and submit a weekly report to the Superintendent if they do not advise a claimant of acceptance or rejection of his or her claim in a timely manner. However, because of the magnitude of the storms and the extraordinary degree of damage, it is hard to quantify the cost impact. This rule should, though, speed up the claims process and thereby may reduce costs for homeowners and small business owners who will be able to repair or replace their damaged or destroyed property sooner.

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

6. Paperwork: If a claim remains unsettled, this rule requires an insurer to send certain claimants in certain counties a letter every 30 days instead of every 90 days, as is currently the case. Further, the rule requires an insurer to submit a weekly report to the Superintendent whenever the insurer has not advised the claimant of the insurer's acceptance or rejection of the claimant's claim within 15 days of receipt of proof of loss (or 30 days where the insurer suspects arson). If a first-party claim for property damage is rejected, the insurer shall notify the claimant of any applicable policy provision limiting the claimant's right to sue the insurer.

7. Duplication: This rule does not duplicate any existing state or federal rule or other legal requirement.

8. Alternatives: The Department considered making this rule applicable to the entire state. However, since the concerns appeared to be localized, the applicability of the amendment is limited to those counties most impacted by the storms.

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

10. Compliance schedule: Insurers must comply with this rule upon the Superintendent's filing the rule with the Secretary of State.

#### **Regulatory Flexibility Analysis**

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers authorized to do business in New York State, none of which fall within the definition of a "small business" as found in State Administrative Procedure Act § 102(8). The Department has monitored annual statements and reports on examination of authorized insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business" because no insurer is both independently owned and has fewer than 100 employees.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at authorized insurers, which are not local governments.

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

1. Types and estimated numbers of rural areas: "Rural areas", as used in the State Administrative Procedure Act ("SAPA") § 102(10), means the counties within the state having less than 200,000 population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties with a population of 200,000 or greater, "rural areas" means towns with population densities of 150 persons or less per square mile, and the villages, individuals, institutions, communities, programs, and such other entities or resources as are found therein. While insurers affected by this rule may be headquartered in rural areas, the rule itself applies only within the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange. None of these counties are rural areas, and the Department does not believe that there are any towns within any of those counties that would be considered to be rural areas within the SAPA definition.

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule would not impose any additional reporting or recordkeeping requirements in rural areas. However, the rule would impose other compliance requirements on insurers that may be headquartered in rural areas by reducing the number of days within which an insurer must commence an investigation of a claim upon receiving notice of the claim and, if the insurer wishes its investigation to include an inspection of the damaged or destroyed property, by requiring that the inspection, whether performed by the insurer, an independent adjuster, or other representative of the insurer, occur within the prescribed time frames. In addition, if a claim remains unsettled, this rule requires an insurer to send certain claimants in certain counties a letter every 30 days instead of every 90 days, as is currently the case. In addition, if a first-party claim for property damage is rejected, the insurer shall notify the claimant of any applicable policy provision limiting the claimant's right to sue the insurer.

Further, the rule requires an insurer to submit a weekly report to the Superintendent whenever the insurer has not advised the claimant of the insurer's acceptance or rejection of the claimant's claim within 15 days of receipt of proof of loss (or 30 days where the insurer suspects arson).

It is unlikely that professional services would be needed in rural areas to comply with this rule.

3. Costs: The rule may result in additional costs to insurers headquartered in rural areas, because they may need to hire additional staff to comply with the reduced time period within which they must commence an investigation. Moreover, insurers will have to provide more frequent updates to claimants and submit a weekly report to the Superintendent if they do not advise a claimant of acceptance or rejection of his or her claim in a timely manner. As a result of the magnitude of the storms and the extraordinary degree of damage, it is hard to quantify the cost impact. However, this rule should speed up the claims process and thereby may reduce costs for homeowners and small business owners who will be able to repair or replace their damaged or destroyed property sooner.

4. Minimizing adverse impact: The Department of Financial Services considered the approaches suggested in SAPA § 202-bb(2) for minimizing adverse economic impacts. Since the public health, safety, or general welfare has been endangered, establishment of differing compliance or reporting requirements or timetables based upon whether a claimant is in a rural area is not appropriate. However, the rule applies only in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, and thus the impact of the rule on rural areas is minimized, since none of those counties are rural areas.

5. Rural area participation: Public and private interests in rural areas had an opportunity to participate in the rule making process when the emergency measure was published in the March 13, 2013 State Register, which was also posted on the Department's website.

#### **Job Impact Statement**

The Department of Financial Services ("Department") finds that this rule will not have any substantial adverse impact on jobs and employment opportunities. This rule reduces the number of days within which an insurer must commence an investigation of a claim upon receiving notice of the claim, and, where necessary to protect health or safety, permits a claimant to commence immediate repairs to certain of the claimant's property without awaiting an inspection. The rule also reduces from every 90 days to every 30 days the time within which an insurer must send to a claimant or the claimant's authorized representative the reasons additional time is needed for investigation, if the claim remains unsettled, and requires an insurer to file a weekly report with the Superintendent if the insurer has not notified the claimant of the insurer's acceptance or rejection of the claimant's claim within 15 days of receipt of proof of loss (or 30 days where the insurer suspects arson).

The Department does not believe that this rule will have any substantial adverse impact on jobs and employment opportunities, including self-employment opportunities.

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## Office of Mental Health

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### ERRATUM

A Notice of Adoption, I.D. No. OMH-12-13-00018-A, pertaining to Transfer of Involuntary Patients to Authorized Secure Facilities, published in the May 29, 2013 issue of the *State Register*, contained an incorrect effective date. Following is the correct effective date: May 29, 2013.

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

#### **Definitions Pertaining to This Chapter**

**I.D. No.** OMH-24-13-00001-P

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

**Proposed Action:** This is a consensus rule making to repeal Part 72 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, section 7.09

**Subject:** Definitions Pertaining to this Chapter.

**Purpose:** Repeal of an outdated Part in Title 14 NYCRR.

**Text of proposed rule:** Pursuant to the authority granted to the Commis-

sioner of the Office of Mental Health in accordance with Section 7.09 of the Mental Hygiene Law, Title 14 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows:  
14 NYCRR Part 72 is repealed.

**Text of proposed rule and any required statements and analyses may be obtained from:** Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov

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

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

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

This rule making is filed as a Consensus rule on the grounds that its purpose is to repeal a regulation that is obsolete; therefore, no person is likely to object.

14 NYCRR Part 72, Definitions Pertaining to this Chapter, was promulgated in 1973 by the Department of Mental Hygiene. When this regulation was promulgated, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities (now known as the Office for People With Developmental Disabilities, or "OPWDD"), and the Office of Alcoholism and Substance Abuse (now known as the Office of Alcoholism and Substance Abuse Services, or "OASAS"), were all a part of the Department of Mental Hygiene, and none had its own rule making authority. In 1977, the New York State Mental Hygiene Law was recodified, and the Department of Mental Hygiene was divided into three autonomous agencies, all of which have independent rule making authority.

14 NYCRR Part 72 is substantively obsolete. The regulation consists of definitions that are no longer current and includes references to Mental Hygiene Law Section 1.05, which was repealed by Chapter 978 of the Laws of 1977. Relevant definitions that pertain to Title 14 NYCRR have been added to the applicable Part. OMH has confirmed that neither OPWDD nor OASAS use Part 72 because it reflects an outdated lexicon. As a result, all three autonomous offices (OMH, OPWDD and OASAS) are proposing the repeal of the obsolete Part 72.

Statutory Authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

#### **Job Impact Statement**

A job impact statement is not being submitted with this notice because it is evident from the subject matter of the rule making that there will be no impact on jobs and employment opportunities. The consensus rule merely repeals an outdated regulation.

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## Office for People with Developmental Disabilities

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

#### **Repeal of Definitions Pertaining to This Chapter**

**I.D. No.** PDD-24-13-00006-P

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

**Proposed Action:** This is a consensus rule making to repeal Part 72 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, section 13.09(b)

**Subject:** Repeal of Definitions Pertaining to this Chapter.

**Purpose:** To repeal an outdated Part in Title 14 NYCRR which contains definitions that are no longer used.

**Text of proposed rule:** Part 72 of Title 14 NYCRR is repealed.

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

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

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

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

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

This rule making is filed as a Consensus rule on the grounds that its purpose is to repeal a regulation that is obsolete; therefore, no person is likely to object.

14 NYCRR Part 72, Definitions Pertaining to this Chapter, was promulgated in 1973 by the Department of Mental Hygiene. When this regulation was promulgated, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities (now known as the Office for People With Developmental Disabilities, or "OPWDD"), and the Office of Alcoholism and Substance Abuse (now known as the Office of Alcoholism and Substance Abuse Services, or "OASAS"), were all a part of the Department of Mental Hygiene, and none had its own rule making authority. In 1977, the New York State Mental Hygiene Law was recodified, and the Department of Mental Hygiene was divided into three autonomous agencies, all of which have independent rule making authority.

14 NYCRR Part 72 is substantively obsolete. The regulation consists of definitions that are no longer current and includes references to Mental Hygiene Law Section 1.05, which was repealed by Chapter 978 of the Laws of 1977. Relevant definitions that pertain to Title 14 NYCRR have been added to the applicable Parts. It has been confirmed that none of the three independent agencies, OPWDD, OMH, or OASAS use Part 72 because it reflects an outdated lexicon. As a result, all three autonomous offices (OMH, OPWDD and OASAS) are proposing the repeal of the obsolete Part 72.

#### **Job Impact Statement**

A job impact statement is not being submitted because it is evident from the subject matter of the rule making that there will be no impact on jobs and employment opportunities. The consensus rule merely repeals an outdated regulation which pertains to definitions that are no longer used.

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## Power Authority of the State of New York

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

#### **Rates for the Sale of Power and Energy**

**I.D. No.** PAS-24-13-00013-P

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

**Proposed Action:** Replace the Authority's current ST-1B and ST-1 with the Schedule of Rates for sale of Firm Market Power applicable to Authority's Firm Market customers and amend ST WNY-1 applicable to Expansion and Replacement Power customers located in Western New York.

**Statutory authority:** Public Authorities Law, section 1005(6)

**Subject:** Rates for the Sale of Power and Energy.

**Purpose:** Replace the market power tariffs (ST-1B & ST-1) with ST-1C and amend ST WNY-1 to be consistent with the Authority's other tariffs.

**Substance of proposed rule:** Pursuant to the State Administrative Procedure Act, the Power Authority of the State of New York (the "Authority") proposes to replace: the current Direct Firm Power Service Tariffs with the Schedule of Rates for the sale of Firm Market Power; applicable to its Market Customers; and to amend: the Western New York Service Tariff applicable to its Expansion and Replacement Power customers located in Western New York.

The Authority proposes to format the service tariffs to be consistent with its other tariffs. This includes consolidating the two current Market tariffs; reformatting the tariffs for easier reading, streamlining and improved organization; adding abbreviations, terms and updated terminology and certain standard provisions applicable to all Authority tariffs.

Written comments on the proposed tariffs will be accepted through July 27, 2013 at the address below. *For further information, contact:* Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, (914) 390-8040 (fax), e-mail: secretarys.office@nypa.gov

**Text of proposed rule and any required statements and analyses may be obtained from:** Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, NY 10601, (914) 390-8085, email: secretarys.office@nypa.gov

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

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

**Regulatory Impact Statement, 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.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### Approving Petition for Clarification by 42nd and 10th Associates, LLC

**I.D. No.** PSC-51-12-00003-A

**Filing Date:** 2013-05-23

**Effective Date:** 2013-05-23

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

**Action taken:** On 5/16/13, the PSC adopted an order approving 42nd and 10th Associates, LLC's petition to modify the 2/18/10 order to submeter electricity at 440 West 42nd Street, New York, New York.

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

**Subject:** Approving petition for clarification by 42nd and 10th Associates, LLC.

**Purpose:** To approve the petition for clarification by 42nd and 10th Associates, LLC.

**Substance of final rule:** The Commission, on May 16, 2013, adopted an order approving the petition of 42nd and 10th Associates, LLC to modify the February 18, 2010 Order regarding submetering electricity at 440 West 42nd Street, New York, New York, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(09-E-0492SA3)

### NOTICE OF ADOPTION

#### Approving the Submetering of Electricity of 175 North Street, Buffalo, New York by Kissling Interests, LLC

**I.D. No.** PSC-51-12-00005-A

**Filing Date:** 2013-05-23

**Effective Date:** 2013-05-23

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

**Action taken:** On 5/16/13, the PSC adopted an order approving the petition filed by Kissling Interests, LLC to submeter electricity at 175 North Street, Buffalo, New York.

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

**Subject:** Approving the submetering of electricity of 175 North Street, Buffalo, New York by Kissling Interests, LLC.

**Purpose:** To approve the submetering of electricity of 175 North Street, Buffalo, New York by Kissling Interests, LLC.

**Substance of final rule:** The Commission, on May 16, 2013, adopted an order approving the petition of Kissling Interests, LLC to submeter electricity at 175 North Street, Buffalo New York, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(12-E-0337SA1)

### NOTICE OF ADOPTION

#### Approval of Modifications to the New York State RPS Eligibility Requirements

**I.D. No.** PSC-01-13-00017-A

**Filing Date:** 2013-05-22

**Effective Date:** 2013-05-22

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

**Action taken:** On 5/16/13, the PSC adopted an order approving the petition of the New York State Energy Research and Development Authority to modify the Renewable Portfolio Standard (RPS) in order to limit eligibility to projects located in New York State.

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

**Subject:** Approval of modifications to the New York State RPS eligibility requirements.

**Purpose:** To approve modifications to the New York State RPS eligibility requirements.

**Substance of final rule:** The Commission, on May 16, 2013, adopted an order approving the petition of New York State Energy Research and Development Authority to limit Main Tier bids and Main Tier contracts to bidders proposing to meet their RPS obligations with renewable resource energy generated inside the State or through an offshore generating facility directly interconnected to New York's electrical grid, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(03-E-0188SA36)

### NOTICE OF ADOPTION

#### Approving NYSERDA to Reallocate Customer-Sited Tier Funds in the RPS Program

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

**Filing Date:** 2013-05-22

**Effective Date:** 2013-05-22

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

**Action taken:** On 5/16/13, the PSC adopted an order approving the petition of the New York State Energy Research and Development Authority (NYSERDA) to reallocate unencumbered Customer-Sited Tier Program funds of the Renewable Portfolio Standard (RPS) Program.

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

**Subject:** Approving NYSEDA to reallocate Customer-Sited Tier funds in the RPS Program.

**Purpose:** To approve NYSEDA to reallocate Customer-Sited Tier funds in the RPS Program.

**Substance of final rule:** The Commission, on May 16, 2013, adopted an order approving the petition of New York State Energy Research and Development Authority to reallocate unencumbered 2012 Customer Sited Tier Program funds to 2013 budgets for the Solar Photovoltaic, Anaerobic Digester Gas to Electricity Program, Fuel Cell and On-Site Wind Programs, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(03-E-0188SA37)

### NOTICE OF ADOPTION

#### Approving an Extension of Time to Complete the Five Year Inspection Cycle of Electric Facilities

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

**Filing Date:** 2013-05-22

**Effective Date:** 2013-05-22

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

**Action taken:** On 5/16/13, the PSC adopted an order approving the petition of Consolidated Edison of New York, Inc. seeking an extension of time to complete inspections of its electric facilities as required by the Electric Safety Standard Order.

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

**Subject:** Approving an extension of time to complete the five year inspection cycle of electric facilities.

**Purpose:** To approve an extension of time to complete the five year inspection cycle of electric facilities.

**Substance of final rule:** The Commission, on May 16, 2013, adopted an order approving the petition of Consolidated Edison Company of New York, Inc., for an extension of time to complete inspections of its electric facilities as required by the Electric Safety Standard Order, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(04-M-0159SA8)

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

#### Request for Relief Requiring Waiver of 16 NYCRR 4.3(c)(2)

**I.D. No.** PSC-24-13-00008-P

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

**Proposed Action:** The Public Service Commission is considering the waiver of one provision of 16 NYCRR regarding two requests to reopen the record concerning the Public Service Commission Order granting Rochester Gas and Electric Corporation's PSL Article VII application.

**Statutory authority:** Public Service Law, section 4 and art. VII

**Subject:** Request for relief requiring waiver of 16 NYCRR 4.3(c)(2).

**Purpose:** To consider requests to reopen the record, requiring waiver of 16 NYCRR 4.3(c)(2).

**Substance of proposed rule:** The Public Service Commission (PSC) is considering a petition for rehearing, filed by Thomas Krenzer, Anna Krenzer, David Krenzer, and Marie Krenzer, of its Order Adopting the Terms of a Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued April 23, 2013), and a petition to reconsider and reopen the hearings in this matter, filed by the Town of Chili, New York. The Krenzlers and the Town of Chili have also moved to intervene as parties in the proceeding. Reopening the record in this proceeding to consider additional facts would require Commission waiver of the provision in 16 NYCRR 4.3(c)(2) that a party intervening after the start of the hearing "shall be bound by the record as developed to that point."

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

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

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

**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-T-0534SP2)

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

#### Repowering Options for the Cayuga Generating Station Located in Lansing, New York, and Alternatives

**I.D. No.** PSC-24-13-00009-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, the Report on Cayuga Repowering Analysis filed by New York State Electric & Gas Corporation on May 17, 2013.

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

**Subject:** Repowering options for the Cayuga generating station located in Lansing, New York, and alternatives.

**Purpose:** To establish whether utility plans should include repowering options for the Cayuga generating station, or other alternatives.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering the Report on Cayuga Repowering Analysis filed by New York State Electric & Gas Corporation on May 17, 2013, concerning the repowering of the Cayuga generating station located in Lansing, New York, and alternatives (Filing). The Commission is considering whether to adopt, modify, or reject, in whole or in part, the Filing, and may address related matters, including but not limited to, the Cayuga Repowering Proposal filed by Cayuga Operating Company, LLC on March 26, 2013.

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

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

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

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

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

(12-E-0577SP1)

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

**Repowering Options for the Dunkirk Generating Station Located in Dunkirk, New York, and Alternatives**

I.D. No. PSC-24-13-00010-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 whether to adopt, modify, or reject, in whole or in part, the Report and Recommendations Comparing Repowering of Dunkirk Power LLC and Transmission System Reinforcements filed by National Grid on May 17, 2013.

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

**Subject:** Repowering options for the Dunkirk generating station located in Dunkirk, New York, and alternatives.

**Purpose:** To establish whether utility plans should include repowering options for the Dunkirk generating station, or other alternatives.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering the Report and Recommendations Comparing Repowering of Dunkirk Power LLC and Transmission System Reinforcements filed by Niagara Mohawk Power Corporation d/b/a National Grid on May 17, 2013, concerning the repowering of its Dunkirk generating station located in Dunkirk, New York, and alternatives (Filing). The Commission is considering whether to adopt, modify, or reject, in whole or in part, the Filing, and may address related matters, including but not limited to, the Dunkirk Repowering Options document filed by NRG Energy, Inc. on April 1, 2013.

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

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

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

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

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

(12-E-0577SP2)

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

**Procedures and Requirements for Certain Energy Highway Transmission Facilities**

I.D. No. PSC-24-13-00011-P

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

**Proposed Action:** The Commission is considering whether to approve, reject, or modify in whole or in part, proposed procedures and application filing requirements for projects submitted in response to the Energy Highway transmission initiative.

**Statutory authority:** Public Service Law, sections 4(1), 20(1), 66(1), 122(1)

**Subject:** Procedures and requirements for certain Energy Highway transmission facilities.

**Purpose:** To specify review procedures and requirements for certain proposed electric transmission facilities.

**Substance of proposed rule:** The Staff of the Department of Public Service is proposing a rule to be applied in the review of the applications proposing alternative current (AC) transmission facilities that will increase transfer capacity through the transmission corridor that includes the

Central East and UPNY/SENY interfaces and meet the objectives of the Energy Highway Task Force Blueprint. The primary goals of this rule are to ensure that appropriate procedures are in place to facilitate a comparative evaluation of multiple projects on a common record, and that any such application contains pertinent information so the Commission may decide, in an expeditious manner, whether to approve a particular project(s).

The rule changes being proposed would specify how projects that are not subject to Article VII of the Public Service Law will be reviewed (including the content of applications), set forth requirements regarding procedures and scoping, the contents of applications for projects subject to Article VII, and public outreach. A copy of Staff's proposed rule can be accessed on the Department's Web site at: [www.dps.ny.gov](http://www.dps.ny.gov), by searching Case 12-T-0502.

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

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

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

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

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

(12-T-0502SP2)

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

**Distribution Proposals of Settlement Funds to Electric Ratepayers**

I.D. No. PSC-24-13-00012-P

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

**Proposed Action:** The Commission is considering proposed plans for the distribution to all affected electric ratepayers settlement funds awarded New York State by the Federal Energy Regulatory Commission in Docket No. IN12-7-000.

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

**Subject:** Distribution proposals of settlement funds to electric ratepayers.

**Purpose:** To decide the manner in which to distribute to electric ratepayers settlement funds.

**Substance of proposed rule:** On October 18, 2012, the Federal Energy Regulatory Commission (FERC) approved the Commission's plan to refund to electric ratepayers \$48 million from a FERC settlement with Constellation Energy Group, Inc. in FERC Docket No. IN12-7-000. The Commission is considering the manner in which it will distribute these funds to electric ratepayers. The Commission will order refunds or take other action related to distributing the FERC settlement funds.

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

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

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

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

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

(13-E-0232SP1)