

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Reporting and Labeling Requirements Governing Sale and Analysis of Commercial Fertilizer

I.D. No. AAM-10-13-00001-A

Filing No. 595

Filing Date: 2013-05-31

Effective Date: 2013-06-19

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

Action taken: Amendment of sections 153.2 and 153.7 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 144 and 146-c

Subject: Reporting and labeling requirements governing sale and analysis of commercial fertilizer.

Purpose: To provide for annual tonnage reporting and increase uniformity for growers and fertilizer industry.

Text or summary was published in the March 6, 2013 issue of the Register, I.D. No. AAM-10-13-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Kevin King, Director Plant Industry, Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: Kevin.King@agriculture.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. AAC-25-13-00007-P

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

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

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

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

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

Text of proposed rule: § 201.1 Purpose, definitions and scope of Part

(a) Purpose. The purpose of this Part is to set forth the accounting, reporting and supervision requirements for all public authorities and other public corporations [specified in this section] covered by this Part. The following terms are defined as follows for the purposes of this Part:

(1) Affiliate or affiliated with shall mean a corporate body or company controlling, controlled by, or under common control with another corporate body.

(2) Subsidiary shall mean a corporate body or company:

(i) having more than half of its voting shares owned or held by a public authority or other public corporation covered by this Part [specified in this section]; or

(ii) having a majority of its directors, trustees or members in common with the directors, trustees or members of a public authority or other public corporation covered by this Part [specified in this section] or as designees of a public authority or other public corporation covered by this Part [specified in this section].

(b) Scope. This Part applies to all public authorities and other public corporations created by or existing under any law of the state of New York, including any and all affiliates and subsidiaries of such public authorities or public corporations, other than:

(1) a public authority or other public corporation created pursuant to agreement or compact with another state or with a foreign power, except where the parties to such agreement or compact have consented to the supervision of the authority's or corporation's accounts by the State Comptroller;

(2) a local authority as defined in section 2 of the Public Authorities Law.

[the following public authorities defined and specified in this subdivision, including any and all affiliates and subsidiaries of such public authorities (except that international or interstate public authorities marked by an asterisk (*) in the following list, shall, as provided in section 5 of article 10 of the Constitution, have the option to comply voluntarily with the requirements of this Part or to refuse to consent to comply with such requirements):

(1) Agriculture and New York State Horse Breeding Development Fund, created by or existing under section 330 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(2) Albany Port District Commission, created by or existing under section 1 of chapter 192 of the Laws of 1925.

(3) Battery Park City Authority, created by or existing under section 1973 of the Public Authorities Law.

(4) Buffalo Fiscal Stability Authority, created by or existing under section 3852 of the Public Authorities Law.

(5) Buffalo and Fort Erie Public Bridge Authority, created by or existing under section 1 of chapter 824 of the Laws of 1933.*

(6) Capital District Transportation Authority, created by or existing under section 1303 of the Public Authorities Law.

(7) Central New York Regional Transportation Authority, created by or existing under section 1328 of the Public Authorities Law.

(8) Community Facilities Project Guarantee Fund, created by or existing under section 14 of chapter 1013 of the Laws of 1969.

(9) City University Construction Fund, created by or existing under section 6272 of the Education Law.

(10) Development Authority of the North Country, created by or existing under section 2703 of the Public Authorities Law.

(11) Dormitory Authority of the State of New York, created by or existing under section 1677 of the Public Authorities Law.

(12) Erie County Fiscal Stability Authority, created by or existing under section 3952 of the Public Authorities Law.

(13) Erie County Medical Center Corporation, created by or existing under section 3628 of the Public Authorities Law.

(14) Executive Mansion Trust, created by or existing under section 54.05 of the Arts and Cultural Affairs Law.

(15) Hudson River-Black River Regulating District, created by or existing under section 15-2137 of the Environmental Conservation Law.

(16) Hudson River Park Trust, created by or existing under section 5 of chapter 592 of the Laws of 1998.

(17) Industrial Exhibit Authority, created by or existing under section 1651 of the Public Authorities Law.

(18) Life Insurance Guaranty Corporation, created by or existing under section 7503 of the Insurance Law.

(19) Long Island Power Authority, created by or existing under section 1020-c of the Public Authorities Law.

(20) Metropolitan Transportation Authority, created by or existing under section 1263 of the Public Authorities Law.

(21) Municipal Assistance Corporation for the City of New York, created by or existing under section 3033 of the Public Authorities Law.

(22) Municipal Assistance Corporation for the city of Troy, created by or existing under section 3053 of the Public Authorities Law.

(23) Nassau County Interim Finance Authority, created by or existing under section 3652 of the Public Authorities Law.

(24) Nassau Health Care Corporation, created by or existing under section 3402 of the Public Authorities Law.

(25) Natural Heritage Trust, created by or existing under section 55.05 of the Arts and Cultural Affairs Law.

(26) Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation, created by or existing under section 3 of chapter 688 of the Laws of 1979.

(27) New York Convention Center Operating Corporation, created by or existing under section 2562 of the Public Authorities Law.

(28) New York State Bridge Authority, created by or existing under section 527 of the Public Authorities Law.

(29) New York State Energy Research and Development Authority, created by or existing under section 1852 of the Public Authorities Law.

(30) New York State Environmental Facilities Corporation, created by or existing under section 1282 of the Public Authorities Law.

(31) New York State Housing Finance Agency, created by or existing under section 43 of the Private Housing Finance Law.

(32) New York Job Development Authority, created by or existing under section 1802 of the Public Authorities Law.

(33) New York Local Government Assistance Corporation, created by or existing under section 3233 of the Public Authorities Law.

(34) New York State Archives Partnership Trust Board, created by or existing under section 4 of the New York State Archives Partnership Trust Act, as added by section 1 of chapter 758 of the Laws of 1992.

(35) New York State Foundation for Science, Technology and Innovation, created by or existing under section 3151 of the Public Authorities Law.

(36) New York State Olympic Regional Development Authority, created by or existing under section 2608 of the Public Authorities Law.

(37) New York State Project Finance Agency, created by or existing under section 2 of chapter 7 of the Laws of 1975.

(38) New York State Sports Authority, created by or existing under section 2463 of the Public Authorities Law.

(39) New York State Theater Institute Corporation, created by or existing under section 9.05 of the Arts and Cultural Affairs Law.

(40) New York State Thoroughbred Breeding and Development Fund

Corporation, created by or existing under section 245 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(41) New York State Thoroughbred Racing Capital Investment Fund, created by or existing under section 253 of the Racing, Pari-Mutuel Wagering and Breeding Law.

(42) New York State Thruway Authority, created by or existing under section 352 of the Public Authorities Law.

(43) New York State Urban Development Corporation, created by or existing under section 4 of the New York State Urban Development Corporation Act, as added by section 1 of chapter 174 of the Laws of 1968.

(44) New York Wine/Grape Foundation, created by or existing under section 2 of chapter 80 of the Laws of 1985.

(45) Niagara Falls Bridge Commission, created by or existing under a 1938 joint congressional resolution reported at 52 United States Statutes 767.

(46) Niagara Frontier Transportation Authority, created by or existing under section 1299-c of the Public Authorities Law.

(47) Ogdensburg Bridge and Port Authority, created by or existing under section 725 of the Public Authorities Law.

(48) Port Authority of New York and New Jersey, created by or existing under article 3 of section 1 of chapter 154 of the Laws of 1921.

(49) Port of Oswego Authority, created by or existing under section 1353 of the Public Authorities Law.

(50) Power Authority of the State of New York, created by or existing under section 1002 of the Public Authorities Law.

(51) Rochester-Genesee Regional Transportation Authority, created by or existing under section 1299-dd of the Public Authorities Law.

(52) Roosevelt Island Operating Corporation, created by or existing under section 3 of chapter 899 of the laws of 1984.

(53) Roswell Park Cancer Institute Corporation, created by or existing under section 3553 of the Public Authorities Law.

(54) State of New York Mortgage Agency, created by or existing under section 2403 of the Public Authorities Law.

(55) State of New York Municipal Bond Bank Agency, created by or existing under section 2433 of the Public Authorities Law.

(56) State University Construction Fund, created by or existing under section 371 of the Education Law.

(57) United Nations Development Corporation, created by or existing under section 4 of chapter 345 of the Laws of 1968.

(58) Westchester County Health Care Corporation, created by or existing under section 3303 of the Public Authorities Law.]

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 474-4146, email: jelacqua@osc.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority: New York State Constitution article X section 5 states that the accounts of public corporations shall be subject to the supervision of the State Comptroller, including those public corporations created pursuant to agreement or compact with another state or with a foreign power where the parties to such agreement or compact have consented to such supervision. In addition, State Finance Law section 8(14) authorizes the Comptroller to make, amend and repeal rules and regulations as deemed necessary in order to carry out the duties of his or her Office. The Constitution and enabling statutes have been consistently interpreted to include within the state Comptroller's authority to supervise public authorities and other public corporations, the power to collect information from them beyond specific statutory provisions, where such information is relevant to the Comptroller's oversight responsibilities.

2. Legislative Objectives: The amendment to this Part will more clearly set forth the scope of the Comptroller's supervision of public authorities by re-defining the Scope of Part 201 to include all public authorities or other public corporations created by or existing under any law of the state of New York, other than: (a) a public authority or public corporation created pursuant to agreement or compact with another state or with a foreign power, except where the parties to such agreement or compact have consented to the supervision of the authority's or corporation's accounts by the State Comptroller and (b) local authorities as defined in section 2 of the Public Authorities Law. Therefore, this Part will no longer list the authorities subject to this Part.

3. Needs and Benefits: The amendment is necessary to promote the constitutional objective of providing greater oversight of the operations and finances of public corporations subject to state Comptroller supervision.

4. Costs: (a) Costs to regulated parties. No additional costs for public

authorities currently covered by Part 201. Costs of implementation by additional authorities and other public corporations will be modest and will be the costs associated with complying with the reporting and supervision requirements of this rule.

(b) Costs to the agency. No additional costs.

(c) Source of the information. N/A.

5. Local Government Mandates: Local authorities, as defined in section 2 of the Public Authorities Law, are excluded from the Scope of Part 201.

6. Paperwork: Part 201 currently requires, and will continue to require, those authorities and other public corporations covered by Part 201 to file reports and documentation as required by Article 9 of the Public Authorities Law and Title 2 (Department of Audit and Control), Chapter V (Public Authorities) of New York's Code of Rules and Regulations.

7. Duplication: Article 9 of the Public Authorities Law requires state and local authorities to report to the New York State Authorities Budget Office (ABO) as well. The Public Authorities Reporting Information System, or PARIS, is the online electronic data entry and collection system jointly designed, developed and operated by the ABO and the Office of the state Comptroller. In using PARIS to file their reports, state and local authorities satisfy the reporting requirements for both the ABO and the state Comptroller's Office.

8. Alternatives: None.

9. Federal Standards: None.

10. Compliance Schedule: It is expected that all public corporations should comply immediately upon the adoption of this rule.

Regulatory Flexibility Analysis

The Office of the State Comptroller finds that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments because local authorities are exempted from the accounting, reporting and supervision requirements for public authorities and other public corporations.

Rural Area Flexibility Analysis

The Office of the State Comptroller finds that this rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas because it relates to the accounting, reporting and supervision requirements for public authorities and other public corporations.

Department of Financial Services

EMERGENCY RULE MAKING

Suitability in Annuity Transactions

I.D. No. DFS-12-13-00003-E

Filing No. 597

Filing Date: 2013-05-31

Effective Date: 2013-05-31

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

Action taken: Addition of Part 224 (Regulation 187) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 308, 309, 2110, 2123, 2208, 3209, 4226, 4525 and art. 24

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

Specific reasons underlying the finding of necessity: This Part requires life insurance companies and fraternal benefit societies ("insurers") to set standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of a transaction are appropriately addressed.

As a result of a low interest rate environment, unsuitable annuities have been aggressively marketed to this state's most vulnerable residents, particularly senior citizens. In New York alone, life insurance companies wrote \$18.8 billion in annuity premiums in 2012. The increased complexity of annuities, including the significant investment risk assumed by purchasers of some annuity products, requires the immediate adoption of this Part, which provides critical consumer protections in all annuity sales transactions.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act") places a high level of importance on state regulation of

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

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

Subject: Suitability in Annuity Transactions.

Purpose: To set forth standards and procedures for recommendations to consumers with respect to annuity contracts.

Text of emergency rule: A new Part 224 is added to read as follows:

Section 224.0 Purpose.

The purpose of this Part is to require insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. These standards and procedures are substantially similar to the National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation ("NAIC Model") for annuities, and the Financial Industry Regulatory Authority's current National Association of Securities Dealers ("NASD") Rule 2310 for securities. To date, more than 30 states have implemented the NAIC Model, while NASD Rule 2310 has applied nationwide for nearly 20 years. Accordingly, this Part intends to bring these national standards for annuity contract sales to New York.

Section 224.1 Applicability.

This Part shall apply to any recommendation to purchase or replace an annuity contract made to a consumer by an insurance producer or an insurer, where no insurance producer is involved, that results in the purchase or replacement recommended.

Section 224.2 Exemptions.

Unless otherwise specifically included, this Part shall not apply to transactions involving:

(a) a direct response solicitation where there is no recommendation made; or

(b) a contract used to fund:

(1) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) a plan described by Internal Revenue Code sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(3) a government or church plan defined in Internal Revenue Code section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Internal Revenue Code section 457;

(4) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; or

(5) a settlement or assumption of liabilities associated with personal injury litigation or any dispute or claim resolution process.

Section 224.3 Definitions.

For the purposes of this Part:

(a) Consumer means the prospective purchaser of an annuity contract.

(b) Insurer means a life insurance company defined in Insurance Law section 107(a)(28), or a fraternal benefit society as defined in Insurance Law section 4501(a).

(c) Recommendation means advice provided by an insurance producer, or an insurer where no insurance producer is involved, to a consumer that results in a purchase or replacement of an annuity contract in accordance with that advice.

(d) Replace or Replacement means a transaction subject to Part 51 of this Title (Insurance Regulation 60) and involving an annuity contract.

(e) Suitability information means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(1) age;

(2) annual income;

(3) financial situation and needs, including the financial resources used for the funding of the annuity;

(4) financial experience;

(5) financial objectives;

(6) intended use of the annuity;

(7) financial time horizon;

(8) existing assets, including investment and life insurance holdings;

- (9) liquidity needs;
- (10) liquid net worth;
- (11) risk tolerance; and
- (12) tax status.

Section 224.4 Duties of Insurers and Insurance Producers.

(a) In recommending to a consumer the purchase or replacement of an annuity contract, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance policies or contracts and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(1) the consumer has been reasonably informed of various features of the annuity contract, such as the potential surrender period and surrender charge, availability of cash value, potential tax implications if the consumer sells, surrenders or annuitizes the annuity contract, death benefit, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, guaranteed interest rates, insurance and investment components, and market risk;

(2) the consumer would benefit from certain features of the annuity contract, such as tax-deferred growth, annuitization or death or living benefit;

(3) the particular annuity contract as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or replacement of the annuity contract, and riders and similar product enhancements, if any, are suitable (and in the case of a replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and

(4) in the case of a replacement of an annuity contract, the replacement is suitable including taking into consideration whether:

(i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), be subject to tax implications if the consumer surrenders or borrows from the annuity contract, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(ii) the consumer would benefit from annuity contract enhancements and improvements; and

(iii) the consumer has had another annuity replacement, in particular, a replacement within the preceding 36 months.

(b) Prior to the recommendation of a purchase or replacement of an annuity contract, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(c) Except as provided under subdivision (d) of this section, an insurer shall not issue an annuity contract recommended to a consumer unless there is a reasonable basis to believe the annuity contract is suitable based on the consumer's suitability information.

(d)(1) Except as provided under paragraph (2) of this subdivision, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subdivision (a) or (c) of this section related to any annuity transaction if:

(i) no recommendation is made;

(ii) a recommendation was made and was later found to have been prepared based on materially inaccurate material information provided by the consumer;

(iii) a consumer refuses to provide relevant suitability information and the annuity purchase or replacement is not recommended; or

(iv) a consumer decides to enter into an annuity purchase or replacement that is not based on a recommendation of the insurer or the insurance producer.

(2) An insurer's issuance of an annuity contract subject to paragraph (1) of this subdivision shall be reasonable under all the circumstances actually known to the insurer at the time the annuity contract is issued.

(e) An insurance producer or an insurer, where no insurance producer is involved, shall at the time of purchase or replacement:

(1) document any recommendation subject to subdivision (a) of this section;

(2) document the consumer's refusal to provide suitability information, if any; and

(3) document that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's or insurer's recommendation.

(f) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and insurance producers' compliance with this Part. An insurer may contract with a third party to establish and maintain a system of supervision with respect to insurance producers.

(g) An insurer shall be responsible for ensuring that every insurance

producer recommending the insurer's annuity contracts is adequately trained to make the recommendation.

(h) No insurance producer shall make a recommendation to a consumer to purchase an annuity contract about which the insurance producer has inadequate knowledge.

(i) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(1) truthfully responding to an insurer's request for confirmation of suitability information;

(2) filing a complaint with the superintendent; or

(3) cooperating with the investigation of a complaint.

Section 224.5 Insurer Responsibility.

The insurer shall take appropriate corrective action for any consumer harmed by a violation of this Part by the insurer, the insurance producer, or any third party that the insurer contracts with pursuant to subdivision (f) of section 224.4 of this Part. In determining any penalty or other disciplinary action against the insurer, the superintendent may consider as mitigation any appropriate corrective action taken by the insurer, or whether the violation was part of a pattern or practice on the part of the insurer.

Section 224.6 Recordkeeping.

All records required or maintained under this Part, whether by an insurance producer, an insurer, or other person shall be maintained in accordance with Part 243 of this Title (Insurance Regulation 152).

Section 224.7 Violations.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-12-13-00003-EP, Issue of March 4, 2013. The emergency rule will expire July 29, 2013.

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 308, 309, 2110, 2123, 2208, 3209, 4226, 4525, and Article 24 of the Insurance Law.

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

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

Insurance Law section 308 authorizes the Superintendent to address to any authorized insurer or its officers any inquiry relating to its transactions or condition or any matter connected therewith.

Insurance Law section 309 authorizes the Superintendent to make examinations into the affairs of entities doing or authorized to do insurance business in this state as often as the Superintendent deems it expedient.

Insurance Law section 2110 provides grounds for the Superintendent to refuse to renew, revoke or suspend the license of an insurance producer if, after notice and hearing, the licensee has violated any insurance laws or regulations.

Insurance Law section 2123 prohibits an agent or representative of an insurer from making misrepresentations, misleading statements and incomplete comparisons.

Insurance Law section 2208 provides that an officer or employee of a licensed insurer or a savings bank, who has been certified pursuant to Insurance Law Article 22, is subject to section 2123 of the Insurance Law.

Insurance Law section 3209 mandates disclosure requirements in the sale of life insurance, annuities, and funding agreements.

Insurance Law section 4226 prohibits an authorized life, or accident and health insurer from making misrepresentations, misleading statements, and incomplete comparisons.

Insurance Law section 4525 applies Articles 2, 3, and 24 of the Insurance Law, and Insurance Law sections 2110(a), (b), (d) - (f), 2123, 3209, and 4226 to authorized fraternal benefit societies.

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

2. **Legislative objectives:** The Legislature has long been concerned with the issue of suitability in sales of life insurance and annuities. Chapter 616 of the Laws of 1997, which, in part, amended Insurance Law § 308, required the Superintendent to report to the Governor, Speaker of the Assembly, and the majority leader of the Senate on the advisability of adopting a law that would prohibit an agent from recommending the purchase or replacement of any individual life insurance policy, annuity contract or funding agreement without reasonable grounds to believe that the recommendation is not unsuitable for the applicant (the "Report"). The Legislature set forth four criteria that an agent would consider in selling products, including: a consumer's financial position, the consumer's need for new or additional insurance, the goal of the consumer and the value, benefits and costs of any existing insurance.

In drafting the Report, the Department considered the legislative changes set forth in Chapter 616 of the Laws of 1997, and the Department's subsequent regulatory requirements that were designed to improve the disclosure requirements to consumers that purchased or replaced life insurance policies and annuity products. It was the Department's determination in the Report that additional time was needed to assess the efficacy of those changes.

Since the Department's Report, the purchase of annuities have become complex financial transactions resulting in a greater need for consumers to rely on professional advice and assistance in understanding available annuities and making purchase decisions. While the Financial Industry Regulatory Authority ("FINRA") regulation and standards for the sale of certain variable annuities have existed nationwide for some time, the National Association of Insurance Commissioners ("NAIC") adopted, in 2003 (and further revised in 2010), the Suitability in Annuity Transactions Model Regulation (the "NAIC Model") for all annuity transactions. To date, more than 30 states have implemented the NAIC Model. Accordingly, this Part is intended to bring these national standards for annuity contract sales to New York. In addition, in light of a low interest rate environment that encourages unsuitable annuity sales, and federal incentives to impose suitability standards, the minimum suitability standards are critical.

3. **Needs and benefits:** This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. It regulates the activities of insurers and producers who make recommendations to consumers to purchase or replace annuity contracts to ensure that insurers and producers make suitable recommendations based on relevant information obtained from the consumers.

As a result of a low interest rate environment, unsuitable annuities have been aggressively marketed to this state's most vulnerable residents, particularly senior citizens. In New York alone, life insurance companies wrote \$18.8 billion in annuity premiums in 2012. The increased complexity of annuities, including the significant investment risk assumed by purchasers of some annuity products, requires the immediate adoption of this Part, which provides critical consumer protections in all annuity sales transactions. In fact, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act") places such a high level of importance on state regulation of the suitability of annuities that, in an effort to provide incentives to states to adopt suitability requirements, the Act offers state agencies that promulgate suitability regulations federal grants of between \$100,000 to \$600,000 towards enhanced protection of seniors in connection with the sale and marketing of financial products.

4. **Costs:** Section 224.4(f) of New York Comp. Codes R. & Reg., tit. 11, Part 224 (Insurance Regulation 187) requires an insurer to establish a supervision system designed to ensure an insurer's and its insurance producers' compliance with the provisions of Insurance Regulation 187. Additionally, § 224.4(g) requires an insurer to be responsible for ensuring that every insurance producer recommending the insurer's annuity contracts is adequately trained to make the recommendation.

As previously stated, the standards and procedures required by this rule are substantially similar to the standards and procedures set forth in the NAIC Model and the NASD Rule 2310. Thus, insurers selling variable annuities will likely already have in place the required supervisory system and training procedures to comply with NASD Rule 2310 and this rule. Similarly, insurers who sell fixed annuities in states where the NAIC Model previously has been adopted will likely have in place the required supervisory system and training procedures to comply with the requirements of the NAIC Model and this rule. As a result, most insurers should incur minimal additional costs in order to comply with the requirements of this rule.

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

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

6. **Paperwork:** The rule requires an insurance producer or an insurer to document: any recommendation subject to § 224.4(a) of Insurance Regulation 187; the consumer's refusal to provide suitability information, if any; and that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's or insurer's recommendation. Additionally, all records required or maintained in accordance with this rule must be maintained in accordance with Part 243 (Insurance Regulation 152).

The documentation required in this rule is substantially similar to the requirements of the aforementioned NAIC Model and NASD Rule 2310. As the NAIC Model has been implemented in many other states and NASD Rule 2310 is imposed nationwide, many companies are already complying with the similar provisions in other jurisdictions. As a result, minimal additional paperwork is expected to be required of most insurers in order to comply with the requirements of this rule.

7. **Duplication:** Sales of insurance products that are securities under federal law, such as variable annuities, are required to meet the suitability standards and procedures in the NASD Rule 2310. However, there currently exists no state or federal rule that specifically requires application of suitability standards in the sales of all annuities to New York consumers.

8. **Alternatives:** This rule is a modified version of the NAIC Model. NAIC Model provisions detailing the procedures and standards of the supervision system required to be established by an insurer and the insurance producer training requirements were not included in this rule.

In 2009, the Department held four public hearings throughout the state to gather information about suitability in order to ascertain whether additional oversight and regulation was needed to protect consumers when they are considering the purchase of life insurance and annuities in New York State and if so, the scope and form of such regulation. Testimony at the public hearings by the life insurance industry and agent trade associations supported adoption of a regulation setting forth standards and procedures for recommendations to consumers that was consistent with the NAIC Model.

An outreach draft of this regulation was posted on the Department's website for public comment. In addition to submitted written comments, the Life Insurance Council of New York (LICONY), a life insurance industry trade association, and the National Association of Insurance and Financial Advisors – New York State (NAIFA - New York State), an agent trade association, met with Department representatives to discuss the draft. Some revisions were made to the draft based on these comments and discussions. NAIFA-New York State remains concerned about producer education and training provisions in the regulation and supports the NAIC Model provisions, which permit an insurance producer to rely on insurer-provided product-specific training standards and materials to comply with the regulation. The NAIC's Model also sets forth requirements for training courses; reporting by course providers, among other things; and verification of course completion by insurers. After due consideration, the Department believes that listing the requirements set forth in the NAIC Model actually may limit information provided to producers, because the mere completion of general training courses would deem a producer qualified to sell all of an insurer's annuities, regardless of the annuities' complexity. Rather, a broad directive to an insurer to make certain that a producer is adequately trained ensures that the insurer remains responsible to train its producers.

9. **Federal standards:** While NASD Rule 2310 requires suitability standards to be met in the sale of insurance products which are securities under federal law, there are no minimum federal standards for the sale of fixed annuity products.

10. **Compliance Schedule:** The standards included in this rule were previously adopted on an emergency basis and have applied to any recommendation to purchase or replace an annuity contract made to a consumer on or after June 30, 2011 by an insurance producer or an insurer and therefore, insurance producers and insurers have been required to comply with the requirements of the rule since such time. Therefore, this rule will be implemented upon its permanent adoption.

Regulatory Flexibility Analysis

1. **Effect of the rule:** This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

This rule is directed to insurers and insurance producers. Most of insurance producers are small businesses within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

This rule should not impose any adverse compliance requirements or

adverse impacts on local governments. The basis for this finding is that this rule is directed at the entities allowed to sell annuity contracts, none of which are local governments.

2. Compliance requirements: The affected parties are required to make suitable recommendations for the purchase or replacement of annuity contracts based on relevant information obtained from the consumers. The rule requires an insurance producer to document: any recommendation subject to Section 224.4(a) of this Part, the consumer's refusal to provide suitability information, if any, and that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's recommendation. Furthermore, all records required under this rule are to be maintained in accordance with Part 243 of this Title.

3. Professional services: None is required to meet the requirements of this rule.

4. Compliance costs: Minimum additional costs are anticipated to be incurred by regulated parties. While there may be costs associated with the compliance of this rule, these costs should be minimal.

5. Economic and technological feasibility: Although there may be minimal additional costs associated with the new rule, compliance is economically feasible for small businesses.

6. Minimizing adverse impact: There is little if no adverse economic impact on small businesses. The compliance, documentation and record-keeping requirements of this rule should have little impact on small businesses. Differing compliance or reporting requirements or timetables for small businesses were not necessary.

7. Small business and local government participation: Affected small businesses had the opportunity to comment at suitability public hearings held by the Department in 2009 and on the outreach draft of the rule, which was posted on the Department website for a two-week comment period. Additionally, this rule has been proposed and was published in the March 20, 2013 State Register, and is posted on the Department's website.

Rural Area Flexibility Analysis

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

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule requires an insurance producer or an insurer to document: any recommendation subject to section 224.4(a) of this Part; the consumer's refusal to provide suitability information, if any; and that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's or insurer's recommendation.

All records required or maintained under this Part shall be maintained in accordance with Part 243 (Insurance Regulation 152).

3. Costs: The standards and procedures required by this rule are substantially similar to the National Association of Insurance Commissioners' "Suitability in Annuity Transactions" Model Regulation ("NAIC Model") for annuities, and the Financial Industry Regulatory Authority's current National Association of Securities Dealers ("NASD") Rule 2310 for securities. Accordingly, insurers that currently sell variable annuities will likely already have in place the required supervisory system and training procedures to comply with NASD Rule 2310 and this rule. Similarly, insurers that sell fixed annuities in states in which the NAIC Model previously has been adopted will likely have in place the required supervisory system and training procedures to comply with the requirements of the NAIC Model and this rule. As a result, most insurers will incur minimal additional costs in order to comply with the requirements of this rule.

4. Minimizing adverse impact: This rule applies to insurers and insurance producers that do business throughout New York State. As previously stated, the standards and procedures required by this rule are substantially similar to the NAIC Model for annuities and the NASD Rule 2310 for securities. Since the NAIC Model has been implemented in many other states and NASD Rule 2310 is imposed nationwide, many companies are already complying with the provisions contained in this rule.

5. Rural area participation: Affected parties doing business in rural areas of the State had the opportunity to comment at suitability public hearings held by the Department in 2009 and on the outreach draft of the rule, which was posted on the Department website for a two-week comment period. Additionally, this rule has been proposed and was published in the March 20, 2013 State Register, and is posted on the Department's website.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of their transactions are appropriately addressed.

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

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Department of Health

EMERGENCY RULE MAKING

Capital Projects for Federally Qualified Health Centers (FQHCs)

I.D. No. HLT-25-13-00001-E

Filing No. 592

Filing Date: 2013-05-30

Effective Date: 2013-05-30

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

Action taken: Amendment of section 86-4.16 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-z(9)

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

Specific reasons underlying the finding of necessity: The proposed amendment establishes a payment methodology to reimburse Federally Qualified Health Centers for the costs of capital projects with a total budget of less than \$3 million exempt from Certificate of Need (CON) requirements.

Public Health Law section 2807-z(9) provides the Commissioner of Health with authority to issue emergency regulations in order to implement the provisions of PHL Section 2807-z. Emergency adoption of the proposed regulation is necessary to provide timely revision to rate-setting regulations to comply with the requirements of PHL Section 2807-z. This amendment is anticipated to be effective in early 2013.

Subject: Capital Projects for Federally Qualified Health Centers (FQHCs).

Purpose: Capital Projects with a total budget of less than \$3 million shall be exempt from Certificate of Need (CON) requirements.

Text of emergency rule: Subdivision (d) of section 86-4.16 of 10 NYCRR is amended to read as follows:

(d) Documented increases in overall operating costs of a facility resulting from capital renovation, expansion, replacement or the inclusion of new programs, staff or services approved by the commissioner through the certificate of need (CON) process may be the basis for an application for revision of a certified rate, *provided, however, that such CON approval shall not be required with regard to such applications for rate revisions which are submitted by federally qualified health centers or rural health centers which are exempt from such CON approval pursuant to section 2807-z of the Public Health Law.* To receive consideration for reimbursement of such costs in the current rate year, a facility shall submit, at the time of appeal or as requested by the commissioner, detailed staffing documentation, proposed budgets and financial data, anticipated utilization expressed in terms of threshold visits and/or procedures and, where relevant, the final certified costs of construction approved by the department. An appeal may be submitted pursuant to this paragraph at any time throughout the rate period. Any modified rate certified or approved pursuant to this paragraph shall be effective on the date the new service or program is implemented or, in the case of capital renovation, expansion or replacement, on the date the project is completed and in use.

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 27, 2013.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2807-z(9) of the Public Health Law (PHL) which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard

to Medicaid reimbursement rates for Diagnostic and Treatment services. Such rate regulations are set forth in Subpart 86-4 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR).

Legislative Objectives:

Subpart 86-4 of Title 10 (Health) NYCRR will be amended by amending section 86-4.16(d) to establish a discrete Federally Qualified Health Center (FQHC) rate and payment methodology to reimburse for the costs of eligible capital projects which are below the \$3 million threshold. Per this regulation capital projects under \$3 million in budget shall not be subject to the Certificate of Need (CON) process or requirements.

Needs and Benefits:

The proposed regulation implements the provisions of PHL Section 2807-z, which exempts certain types of diagnostic and treatment centers from CON review for capital projects under \$3 million. As specified in PHL § 2807-z(6) and (7), the exempted facilities are those which receive federal grant funding reflecting their designation by the federal government as FQHCs or as rural health centers.

COSTS:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to State Government:

The enacted state budget for State Fiscal Year (SFY) 2012-13 does not include any state share annually to cover the anticipated 12-month total incremental cost to the Medicaid program for providing reimbursement for eligible capital projects. As the FQHC payment rate will not be effective until 2013, less spending will occur in the current SFY due to the delay in implementation.

Costs of Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

No additional paperwork is required to be filed by FQHCs.

Duplication:

This regulation does not duplicate any existing federal, state or local government regulation.

Alternatives:

No significant alternatives are available. The revised regulation is required to comply with the provisions of PHL Section 2807-z.

Federal Standards:

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

Compliance Schedule:

The proposed regulation establishes a new FQHC prospective payment system rate. There is no period of time necessary for regulated parties to achieve compliance with the regulation.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

No health care provider subject to the provisions of this regulation will see a decrease in funding as a result of this regulation. The regulation implements the opportunity for additional reimbursement to all designated Federally Qualified Health Centers (FQHCs). This rule will have no direct effect on Small Business and Local Governments.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of the proposed regulation.

Professional Services:

No new or additional professional services are required in order to comply with the proposed regulation.

Compliance Costs:

No additional compliance costs are anticipated as a result of this rule.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule because there are no technological requirements other than the use of existing technology. The overall economic impact of complying with the requirements of this regulation is expected to be positive as it provides reimbursement to FQHCs to help cover the costs associated with eligible capital projects under \$3 million.

Minimizing Adverse Impact:

This regulation will not have any adverse impact on the providers as this is intended to ensure reasonable capital cost reimbursement to all FQHCs in a timely manner.

Small Business and Local Government Participation:

This regulation provides the opportunity for additional reimbursement to FQHCs statewide and thus there is a positive impact for small businesses. The local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this regulation.

Rural Area Flexibility Analysis

Effect on Rural Areas:

The proposed regulation applies to all Federally Qualified Health Centers (FQHCs) throughout the state, including those located in rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>).

Allegany	Greene	Schoharie
Cattaraugus	Hamilton	Schuyler
Cayuga	Herkimer	Seneca
Chautauque	Jefferson	St. Lawrence
Chemung	Lewis	Steuben
Chenango	Livingston	Sullivan
Clinton	Madison	Tioga
Columbia	Montgomery	Tompkins
Cortland	Ontario	Ulster
Delaware	Orleans	Warren
Essex	Oswego	Washington
Franklin	Otsego	Wayne
Fulton	Putnam	Wyoming
Genesee	Rensselaer	Yates
	Schenectady	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile based upon the 2010 census.

Albany	Monroe	Orange
Broome	Niagara	Saratoga
Dutchess	Oneida	Suffolk
Erie	Onondaga	

Compliance Requirements:

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of the proposed regulation.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed regulation.

Compliance Costs:

No additional compliance costs are anticipated as a result of this rule.

Minimizing Adverse Impact:

The regulation provides the opportunity for additional reimbursement to Federally Qualified Health Centers and Rural Health Centers statewide for their eligible capital projects.

Rural Area Participation:

In addition to FQHCs, rural health centers are also able to share the benefit of this new regulation.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent from the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation establishes a Federally Qualified Health Center (FQHC) rate-setting methodology to reimburse Diagnostic and Treatment Centers for the capital costs of less than \$3 million which are not subject to the regulation regarding certificate of need process or requirements. The proposed regulation has no adverse implications for job opportunities. Rather, the additional revenue generated by FQHCs as a result of the new payment rate may provide them with the financial resources they need to add staff, thus enhancing their ability to provide expanded services.

**EMERGENCY
RULE MAKING**

NYS Medical Indemnity Fund

I.D. No. HLT-25-13-00006-E

Filing No. 599

Filing Date: 2013-06-03

Effective Date: 2013-06-03

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

Action taken: Amendment of Part 69 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2999-j

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

Specific reasons underlying the finding of necessity: These regulations are being promulgated on an emergency basis because of the need for the Fund to be operational as of October 1, 2011. Authority for emergency promulgation was specifically provided in section 111 of Article VII of the New York State 2011-2012 Budget.

Subject: NYS Medical Indemnity Fund.

Purpose: To provide the structure within which the NYS Medical Indemnity Fund will operate.

Substance of emergency rule: As required by section 2999-j(15) of the Public Health Law ("PHL"), the New York State Commissioner of Health, in consultation with the Superintendent of Financial Services, has promulgated these regulations to provide the structure within which the New York State Medical Indemnity Fund ("Fund") will operate. Included are (a) critical definitions such as "birth-related neurological injury" and "qualifying health care costs" for purposes of coverage, (b) what the application process for enrollment in the Fund will be, (c) what qualifying health care costs will require prior approval, (d) what the claims submission process will be, (e) what the review process will be for claims denials, (f) what the review process will be for prior approval denials, and (g) how and when the required actuarial calculations will be done.

The application process itself has been developed to be as streamlined as possible. Submission of (a) a completed application form, (b) a signed release form, (c) a certified copy of a judgment or court-ordered settlement that finds or deems the plaintiff to have sustained a birth-related neurological injury, (d) documentation regarding the specific nature and degree of the applicant's neurological injury or injuries at present, (e) copies of medical records that substantiate the allegation that the applicant sustained a "birth-related neurological injury," and (f) documentation of any other health insurance the applicant may have are required for actual enrollment in the Fund.

The parent or other authorized person must submit the name, address, and phone number of all providers providing care to the applicant at the time of enrollment for purposes of both claims processing and case management. To the extent that documents prepared for litigation and/or other health related purposes contain the required background information, such documentation may be submitted to meet these requirements as well, provided that this documentation still accurately describes the applicant's condition and treatment being provided.

Those expenses that will or can be covered as qualifying health care costs are defined very broadly. Prior approval is required only for very costly items, items that involve major construction, and/or out of the ordinary expenses. Such prior approval requirements are similar to the prior approval requirements of various Medicaid waiver programs and to commercial insurance prior approval requirements for certain items and/or services.

Reviews of denials of claims and denials of requests for prior approval will provide enrollees with full due process and prompt decisions. Enrollees are entitled to a conference with the Fund Administrator or his or her designee and a review, which will involve either a hearing before or a document review by a Department of Health hearing officer. In all reviews, the hearing officer will make a recommendation regarding the issue and the Commissioner or his designee will make the final determination. An expedited review procedure has also been developed for emergency situations.

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 31, 2013.

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

Regulatory Impact Statement

Statutory Authority:

Section 2999-j (15) of the Public Health Law (PHL) specifically states that the Commissioner of Health, in consultation with the Superintendent of Financial Services (the Superintendent of Insurance until October 3, 2011), "shall promulgate . . . all rules and regulations necessary for the proper administration of the fund in accordance with the provisions of this section, including, but not limited to those concerning the payment of claims and concerning the actuarial calculations necessary to determine, annually, the total amount to be paid into the fund as otherwise needed to implement this title."

Legislative Objectives:

The Legislature delegated the details of the Fund's operation to the two State agencies that have the appropriate expertise to develop, implement and enforce all aspects of the Fund's operations. Those two agencies are the Department of Health and the Department of Financial Services. These proposed regulations reflect the collaboration of both agencies in providing the administrative details for the manner in which the Fund will operate.

Needs and Benefits:

The regulations have the goal of establishing a process to provide that persons who have obtained a settlement or a judgment based on having sustained a birth-related neurological injury as the result of medical malpractice will have lifetime medical coverage.

Costs to Regulated Parties:

There are no costs imposed on regulated parties by these regulations. Qualified plaintiffs will not incur any costs in connection with applying for enrollment in the Fund or coverage by the Fund.

Costs to the Administering Agencies, the State, and Local Governments: Costs associated with the Fund will be covered by applicable appropriations. The Department of Health will also seek Federal Financial Participation for the health care costs of qualified plaintiffs that otherwise would be covered by Medicaid. No costs are expected to local governments.

Local Government Mandates:

None.

Paperwork:

The proposed regulations impose no reporting requirements on any regulated parties.

Duplication:

There are no other State or Federal requirements that duplicate, overlap, or conflict with the statute and the proposed regulations. Although some of the services to be provided by the Fund are the same as those available under certain Medicaid waivers, the waivers have limited slots. Coordination of benefits will be one of the responsibilities of the Fund Administrator. Health care services, equipment, medications or other items that any commercial insurer providing coverage to a qualified plaintiff is legally obligated to provide will not be covered by the Fund (except for copayments and/or deductibles) nor will the Fund cover any health care service, equipment, or other item that either (1) is already being provided through another State or Federal program or similar program in another country, if applicable, such as the Early Intervention Program or as part of an Individualized Education Plan or (2) is not being provided to a qualified plaintiff through another State or Federal program or similar program in another country, if applicable, for which the qualified plaintiff is eligible but for which the parent or guardian cannot demonstrate that he or she has made a reasonable effort to obtain such service, equipment or item for the qualified plaintiff through the applicable program.

Alternatives:

Given the statute's directive, there are no alternatives to promulgating the proposed regulations.

Federal Standards:

There are no minimum Federal standards regarding this subject.

Compliance Schedule:

The Fund was required to be operational by October 1, 2011.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on rural areas, and it does not impose reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the

proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prescription Monitoring Program

I.D. No. HLT-25-13-00017-P

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

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

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

Subject: Prescription Monitoring Program.

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

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): Pursuant to recent amendments to Article 33 of the Public Health Law, the proposed regulations set forth the duty of practitioners to consult the Prescription Monitoring Program Registry (PMP), the duty of pharmacies to update the PMP in real time, the ability of pharmacists to consult the PMP, and the ability of practitioners and pharmacists to appoint designees to access the PMP on their behalf, as well as exceptions to such duties.

These proposed regulations would require practitioners to consult the PMP for the purpose of reviewing a patient's controlled substance history prior to prescribing for or dispensing to that patient any controlled substance listed on schedule II, III, or IV. Such history would be required to be obtained from the PMP no more than 24 hours prior to the practitioner prescribing or dispensing any controlled substance to that patient. Confirmation of such consultation or the reason for failing to consult would be noted in the patient's medical chart by the practitioner.

The amendments include exceptions to the duty to consult:

1. veterinarians;
2. a practitioner dispensing pursuant to Public Health Law section 3351(3);
3. a practitioner administering a controlled substance;
4. a practitioner prescribing or ordering a controlled substance for a patient of an institutional dispenser for use on the premises of or an emergency transfer from the institutional dispenser;
5. a practitioner prescribing a controlled substance in the emergency department of a general hospital, provided that the quantity of controlled substance prescribed does not exceed a five-day supply if the controlled substance were used in accordance with the directions for use;
6. a practitioner prescribing a controlled substance to a patient under the care of a hospice;
7. a practitioner when:
 - a. it is not reasonably possible for the practitioner to access the PMP in a timely manner;
 - b. no other practitioner or designee authorized to access the PMP is reasonably available; and
 - c. the quantity of controlled substance prescribed does not exceed a five-day supply if the controlled substance were used in accordance with the directions for use;
8. a practitioner acting in circumstances under which consultation of the PMP would result in a patient's inability to obtain a prescription in a timely manner, thereby adversely impacting the medical condition of such patient, provided that the quantity of the controlled substance does not exceed a five-day supply if the controlled substance were used in accordance with the directions for use;
9. a situation where the PMP is not operational or where it cannot be accessed by the practitioner due to a temporary technological or electrical failure; or
10. a practitioner to whom the commissioner has granted a waiver from the requirement to consult the PMP. A waiver could be issued by the commissioner based upon a showing by a practitioner that his or her ability to consult the PMP is unduly burdened by:
 - a. technological limitations that are not reasonably within the control of the practitioner; or
 - b. other exceptional circumstance demonstrated by the practitioner.

These proposed regulations also provide that a practitioner may authorize a designee to consult the PMP on his or her behalf, provided that the ultimate decision as to whether or not to prescribe or dispense a controlled substance remains with the practitioner and is reasonably informed by the relevant controlled substance history information obtained from the PMP. A practitioner could only appoint a designee if:

1. such designee is located in the state of New York when accessing the PMP;

2. the designee is employed by the same professional practice or is under contract with such practice. For purposes of this subparagraph, professional practice shall include, but not be limited to, an institutional dispenser where the designating practitioner is employed, under contract, or otherwise has privileges or authorization to practice;

3. the practitioner takes reasonable steps to ensure or has actual knowledge that such designee is sufficiently competent in the use of the PMP and that such designee is aware of and conforms to all relevant federal and state privacy statutes;

4. the practitioner remains responsible for ensuring that access to the PMP by the designee is limited to authorized purposes and occurs in a manner that protects the confidentiality of the information obtained from the PMP, and remains responsible for any breach of confidentiality; and

5. the practitioner selects and maintains all active designees authorized to access the PMP.

Upon relinquishment or termination of employment or authorization as a designee, a designating practitioner would be required to immediately notify the Department of the revocation of the designee's authorization to access the PMP on the designating practitioner's behalf.

These proposed regulations would also allow a pharmacist to consult the PMP in order to review the controlled substance history of an individual for whom one or more prescriptions for controlled substances is presented to such pharmacist. A pharmacist would also be able to designate another pharmacist or a pharmacy intern to consult the PMP on the pharmacist's behalf, provided that:

1. such designee is located in the state of New York when accessing the PMP and is employed by the same pharmacy or is under contract with such pharmacy; and
2. the designating pharmacist selects and maintains all active designees authorized to access the PMP.

Upon relinquishment or termination of employment or authorization as a designee, a designating pharmacist would be required to immediately notify the Department of the revocation of the designee's authorization to access the PMP on the designating pharmacist's behalf.

The amendments would require real-time reporting of prescription information. Pharmacists and dispensing practitioners within New York State would be required to file information regarding controlled substances and the patient with the Department via the Bureau of Narcotic Enforcement within 24 hours of the substance being delivered. A waiver allowing such filings within a longer period of time could be issued by the commissioner based upon a showing of economic hardship, technological limitations that are not reasonably within the control of the pharmacy or practitioner; or other exceptional circumstance. Pharmacies delivering prescriptions by mail or licensed express delivery services would be required to file the prescription information not later than 72 hours after the substance was shipped from the pharmacy.

These proposed regulations would also require, when applicable, pharmacies and dispensing practitioners to file a zero report, which is a report that no controlled substances were dispensed by a pharmacy or dispensing practitioner during the relevant period of time. A zero report would be required no later than 14 days following the most recent previously reported dispensing of a controlled substance, the submission of a prior zero report, or the termination of a waiver of the requirement to file a zero report. A waiver of the requirement to file a zero report could be issued by the commissioner based upon a showing that a pharmacy or practitioner does not dispense controlled substances within the state of New York.

These proposed regulations also provide for the sharing of confidential patient information with other select entities including the deputy attorney general for the Medicaid fraud control unit or his or her designee, local health departments, medical examiners or coroners, and to an individual (to provide the individual his or her own controlled substance history) and law enforcement under certain circumstances.

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

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

Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate their purpose and intent. In addition, regulations with regard to the Prescription Monitoring Program Registry (PMP) are authorized by Public Health Law § 3343-a(9). The Department proposes amendments to the regulations that would effectuate the changes in § 3333 and § 3371 of the Public Health

Law and the addition of § 3343-a to the Public Health Law resulting from Chapter 447 of the Laws of 2012.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. The legislative purpose of Article 33 is to allow the legitimate use of controlled substances in health care, including palliative care, veterinary care, research and other uses authorized by the law while combating the illegal use of and trade in controlled substances. The proposed amendments are required by changes to Article 33 of the Public Health Law pursuant to Chapter 447 of the Laws of 2012.

Needs and Benefits:

These amendments are required to facilitate the changes and the additions to the Public Health Law enacted by Chapter 447 of the Laws of 2012 which, among other things, require real-time reporting to the PMP by pharmacies and dispensing practitioners and add a duty to consult the PMP by practitioners who are prescribing controlled substances.

Benefits of the proposed amendments include ensuring that practitioners are aware of other prescriptions that their patients have recently received which could discourage "doctor shopping" and avoid over-prescribing of controlled substances, as well as assisting in avoiding harmful drug interactions. The proposed amendments will implement the recent changes to Article 33 of the Public Health Law made by Chapter 447 of the Laws of 2012. A more specific description of the benefits provided by the amendments follows.

The current regulations require prescription information from pharmacies and dispensing practitioners for certain controlled substances to be filed electronically with the New York State Department of Health on a monthly basis. The amendments specify the new "real time" reporting requirement added by Chapter 447 of the Laws of 2012 as "24 hours after the substance was delivered." The amendments also specify a new reporting time frame for mail or licensed express delivery services of "not later than 72 hours after the substance was shipped from the pharmacy" and a waiver process to allow pharmacies to make such filings within a longer period of time. Additionally, the amendments create a requirement for "zero reporting" when no controlled substances have been dispensed by a practitioner or pharmacy to ensure that at least every 14 days the Bureau of Narcotic Enforcement has been informed that no controlled substances have been dispensed. The amendments provide for a waiver of the zero reporting requirement when appropriate. Also, the amendments authorize pharmacists to access the PMP "in order to review the controlled substance history of an individual for whom one or more prescriptions for controlled substances is presented to such pharmacist", as well as providing for the authorization of designees to access the PMP on the pharmacist's behalf.

New York State has collected controlled substance dispensing information since 1973. Since February of 2010, a portion of the data contained within the PMP has been made available to all DEA-licensed practitioners throughout New York State, free-of-charge. Although the PMP has been in existence for decades, practitioners have never been required to consult it, and very few have used it. From February of 2010 through March of 2013, out of approximately 115,000 practitioners, only about 4,400 had used the PMP for a total of approximately 407,000 searches. Pursuant to Chapter 447 of the Laws of 2012, and as specified in the amendments, practitioners will be required to consult the PMP "[p]rior to prescribing for or dispensing to a patient any controlled substance listed on schedule II, III, or IV...for the purpose of reviewing that patient's controlled substance history" and to use as a deciding factor regarding "whether or not to prescribe or dispense a controlled substance [to the patient.]" This consultation must occur "no more than 24 hours prior to the practitioner prescribing or dispensing any controlled substance to that patient." There are enumerated exceptions, as well as a waiver process from this duty to consult. There is also a provision for the authorization of designees to access the PMP on the practitioner's behalf.

These proposed amendments promote the safe and effective use of prescription drugs while attempting to curb the diversion of such drugs. Requiring real-time updates of the PMP and consultation of the PMP by practitioners has the potential to minimize medication errors and reduce the possibility of "doctor shopping" and over-prescribing. This should lead to enhanced patient care and safety.

The use of data from the PMP will help practitioners make a more informed decision when deciding whether to prescribe a controlled substance to a patient. Similarly, a review of the PMP will serve to further inform pharmacists about their patient presenting a prescription for a controlled substance. The use of the PMP will present a clearer picture of a person's controlled substance history to the practitioner or pharmacist before prescribing or dispensing controlled substances in schedules II through IV. Some members of the medical community and particular professional societies have expressed concerns with these new

requirements. Some of the expressed concerns have been the impact to practitioners' work-flow and the expressed belief that practitioners, instead of checking the database, would choose to not treat a patient who might otherwise be an appropriate candidate for a controlled substance prescription. As noted above, these amendments contain exceptions which address those concerns, detailing circumstances when a waiver is appropriate and restating various patient safety exceptions.

The amendments also provide for the sharing of confidential patient information with other select entities including, the Deputy Attorney for the Medicaid Fraud Control Unit or his or her designee, local health departments, medical examiners or coroners, and to an individual (to provide the individual his or her own controlled substance history) and law enforcement under certain circumstances.

Costs:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

Pharmacies and dispensing practitioners may incur costs related to programming associated with the implementation of the more frequent reporting requirement of controlled substance data to the Department. As pharmacies and dispensing practitioners currently are required to report to the Department on a monthly basis, costs should be limited to initial programming changes related to the 24-hour reporting requirement. Most pharmacies are expected to use existing software applications and/or existing vendors to meet this requirement. A survey of existing chain pharmacies and vendors that support independent pharmacies indicated programming costs associated with implementation of the reporting requirement could be up to approximately \$15,000. Other vendors indicated that they are currently able to meet the requirement with minimal lead time and costs. Dispensing practitioners that currently utilize the existing online manual data reporting system will be able to continue to utilize this Department-supported reporting system with no additional costs anticipated. There is no fee, tax, or transactional cost associated with creating a Health Commerce System account or accessing the PMP. In addition, the amendments include a waiver process to allow pharmacies and practitioners to report within a longer period of time.

Costs to State and Local Government:

The proposed rule does not require local government to perform any additional tasks as governmental entities, but will result in additional administrative tasks by the Department of Health as discussed below. Therefore, it is not anticipated to have an adverse fiscal impact on local government, but the Department of Health anticipates increased administrative costs as discussed below. It should be noted that 95 pharmacies throughout the State are owned by government entities and costs will be incurred by those government-owned pharmacies in the same manner as independent and chain pharmacies. Real-time updates and consultation of the PMP with regard to controlled substances could reduce the number of incidents of diversion and will likely reduce the volume and negative impacts of over-prescribing and the associated costs to the State. Therefore, the regulations may have a positive fiscal impact in that regard.

Costs to the Department of Health:

The Department of Health staff time will be necessary to implement the amendments allowing practitioner designees to access the PMP, as well as pharmacists and their designees. The Department will need to review Health Commerce System account applications and create user accounts for these new designees and pharmacists. It is estimated that 40,000 practitioners and an unknown number of designees to approximately 90,000 practitioners will require user account set-up. In addition, while not mandated, the potential exists for approximately 22,000 pharmacists and an unknown number of their designees to request user accounts. In addition, computer program development is needed to implement these new functionalities, including linking a practitioner's/pharmacist's account to that of a designee. In addition, several computer programmers have been assigned to update the current data collection system and add additional functionalities to the PMP, allowing pharmacies to report information in "real-time" in a more secure and user-friendly fashion.

Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district, except where pharmacies are owned by local governments as described above.

Paperwork:

There is paperwork and process associated with obtaining authorization to access the PMP. Each practitioner or pharmacist, if they wish to consult, will be required to obtain a Health Commerce System account, if they do not currently have one, and if the practitioner or pharmacist chooses to appoint designees then that information will have to be entered into the system by the practitioner or pharmacist. It is anticipated that these activities will primarily occur initially upon implementation of the amendments.

Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

Alternatives:

Changing the regulations was required by virtue of amendments to state statute. There were no significant alternatives to be considered during the regulatory process.

Federal Standards:

The regulatory amendments do not exceed any minimum standards of the federal government. There is no federal equivalent to the PMP nor are there any federal standards regarding state PMPs.

Compliance Schedule:

The proposed rule requires real-time reporting by pharmacies and consultation of the PMP by practitioners in compliance with Part A of Chapter 447 of the Laws of 2012 which will be effective August 27, 2013.

Regulatory Flexibility Analysis**Effect of Rule:**

This proposed rule will affect New York State practitioners who prescribe and dispense prescriptions for controlled substances and New York State pharmacies and pharmacists. Records retrieved from the Education Department's Office of the Professions show that as of January 7, 2013 there were a total of 115,032 practitioners (physicians, dentists, physician assistants, podiatrists, midwives and nurse practitioners) registered in the State of New York. Records retrieved from the Education Department's Board of Pharmacy show that as of January 7, 2013, there were a total of 5,044 registered pharmacies and there were 18,958 registered pharmacists in the State of New York. Of these totals, approximately 2,573 represent small business establishments and 95 are owned by government entities, accounting for 51% and 1.9% respectively of the total number of pharmacies.

Compliance Requirements:

These amendments are required to facilitate the changes and the additions to the Public Health Law enacted by Chapter 447 of the Laws of 2012 which, among other things, require real-time reporting to the PMP by pharmacies and dispensing practitioners and add a duty to consult the PMP by practitioners who are prescribing controlled substances.

Under current regulations, pharmacies and dispensers are required to report controlled substance dispensing data to the Department on a monthly basis. The proposed amendments would require more frequent reporting of controlled substance dispensing data (i.e., within 24 hours after the substance was delivered). The proposed regulations also require a new reporting time frame for mail or licensed express delivery services of "not later than 72 hours after the substance was shipped from the pharmacy." Additionally, the amendments create a requirement for "zero reporting" when no controlled substances have been dispensed by a practitioner or pharmacy to ensure that at least every 14 days the Bureau of Narcotic Enforcement has been informed that no controlled substances have been dispensed. The amendments provide for waivers of these requirements when appropriate. These requirements may necessitate computer programming services initially.

Professional Services:

The proposed amendments would require pharmacies to report controlled substance dispensing information to the Department of Health within 24 hours of delivering the controlled substance. Previously, dispensers were required to report once a month. This change will likely require additional computer programming development by the dispenser or their contracted vendor. A survey of existing chain pharmacies and vendors that support independent pharmacies indicated programming costs associated with implementation of the reporting requirement could be up to approximately \$15,000. Other vendors indicated that they are currently able to meet the requirement with minimal lead time and costs. Dispensing practitioners that currently utilize the existing online manual data reporting system will be able to continue to utilize this Department-supported reporting system with no additional costs anticipated. Practitioners will need to obtain a Health Commerce System account, as well as internet service for themselves and/or their designees.

Compliance Costs:**Costs to Private Regulated Parties:**

For pharmacies and dispensers to meet the reporting requirements specified in this rule, an estimate of no cost to approximately \$15,000 can be anticipated. These costs are reflective of associated computer programming necessitated by the more frequent reporting of controlled substance data to the Department. There is no fee, tax, or transactional cost associated with creating a Health Commerce System account or accessing the PMP.

Costs to State Government and Local Government:

The proposed rule does not require local government to perform any additional tasks as governmental entities, but will result in additional administrative tasks by the Department of Health as discussed below. Therefore, it is not anticipated to have an adverse fiscal impact on local government, but the Department of Health anticipates increased administrative costs as discussed below. It should be noted that 95 pharmacies throughout the State are owned by government entities and costs will be

incurred by those government-owned pharmacies in the same manner as independent and chain pharmacies. Real-time updates and consultation of the PMP with regard to controlled substances could reduce the number of incidents of diversion and will likely reduce the volume and negative impacts of over-prescribing the associated costs to the State. Therefore, the regulations may have a positive fiscal impact in that regard.

A cure period is not required to be incorporated in the amendments pursuant to Chapter 524 of the Laws of 2011 insofar as the proposed amendments do not involve the establishment or modification of a violation or of penalties associated with a violation.

Economic and Technological Feasibility:

There are expected to be initial costs to dispensers to meet the 24-hour reporting requirement. After initial programming is completed, it is expected that these changes will reduce the amount of time spent by employees reviewing and submitting controlled substance data to the Department.

The current PMP has been operating on-line for approximately three and a half years, and is currently available to all DEA-licensed practitioners within New York State. In an attempt to encourage use, the Department is investing resources in updating the current system to make it more user-friendly and to provide additional functions.

The technological requirements to access the PMP are minimal. Practitioners, pharmacists, and their designees will need access to the internet and a Health Commerce System account. The proposed amendments also provide for waivers of these requirements when appropriate. There is no fee, tax, or transactional cost associated with creating a Health Commerce System account or accessing the PMP.

Minimizing Adverse Impact:

To minimize any undue burden on a particular practitioner, the amendments provide for the use of a designee and PMP program functionalities to allow for multiple searches at one time to aid in potential work flow changes. The amendments also provide for a waiver process for practitioners to be exempted from the duty to consult the PMP based upon technological limitations that are not reasonably within the control of the practitioner or other exceptional circumstance demonstrated by the practitioner. Additionally, the amendments provide for a reporting waiver process for pharmacies and practitioners.

Small Business and Local Government Participation:

During the drafting of these amendments, the Department consulted with the State Education Department's Board of Pharmacy. The Department also consulted with representatives from the Pharmaceutical Society of the State of New York, the membership of which consists of pharmacists and others who have an interest in the practice of pharmacy, including owners of small businesses, vendors, employees of pharmacies and employees of private and government institutions, and the New York Chapter of the American Society of Consultant Pharmacists, the membership of which consists of pharmacists who provide consulting services to private or government owned residential health care facilities. Issues and comments relevant to dispensing, record keeping, and consulting were discussed at open forums such as the New York State Pharmacy Conference meetings and the Pharmacy Advisory Committee (PAC) meetings. Pharmacy conferences are held quarterly for the purpose of sharing information among stakeholders in the practice of pharmacy, including representatives from the colleges of pharmacy in New York State, government agencies, regulatory agencies, and all pharmacy practice settings. The PAC acts as an advisory body to the Department of Health on pharmacy issues related to the Medicaid Program. The Department also consulted with the National Association of Chain Drug Stores, an organization dedicated to advancing the interests and objectives of the chain community pharmacy industry, and with various other pharmacy leaders and stakeholders. The amendments were drafted taking into consideration the pharmacy community's comments and suggestions with respect to the current laws and regulations and how the amendments would affect the overall dispensing process.

The Department consulted with the Medical Society of the State of New York, an organization dedicated to promoting and maintaining high standards in medical education and in the practice of medicine in an effort to ensure that quality medical care is available to the public. The Department also consulted with the Greater New York Hospital Association and the New York City Health and Hospitals Corporation. Input was also received from the Office of Professional Medical Conduct, the New York Chapter of the American College of Physicians and the workgroup established under Public Health Law Section 3309-a to provide input related to the implementation of the PMP. Some practitioners and practitioner professional societies expressed concerns regarding the expected cost to practitioners as well as technological barriers facing technologically naïve practitioners. The Department is confident that the exceptions and waiver process provided for in the statute and the regulatory amendments address these concerns.

Rural Area Flexibility Analysis**Types and Estimated Numbers of Rural Areas:**

The amendments apply uniformly throughout the state, including rural

areas. Outside of major cities and metropolitan population centers, the majority of counties in New York contain rural areas. These can range in extent from small towns and villages and their surrounding areas, to locations that are sparsely populated. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. According to the Education Department's Board of Pharmacy, as of January 7, 2013, there are a total of 2,030 registered pharmacies and 8,651 registered pharmacists located in rural counties, which account for 45.6% of the pharmacists and 40.2% of the pharmacies registered in the State of New York. The total number of DEA registered practitioners in rural areas (i.e., those with the authority to write a controlled substance prescription) is 43,593, representing 61% of the total number of DEA registered prescribers. These practitioners include medical doctors, dentists, nurse practitioners, physician assistants, podiatrists and midwives.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

These amendments are required to facilitate the changes and the additions to the Public Health Law enacted by Chapter 447 of the Laws of 2012 which, among other things, require real-time reporting to the PMP by pharmacies and dispensing practitioners and add a duty to consult the PMP by practitioners who are prescribing controlled substances. Under current regulations, pharmacies and dispensers are required to report controlled substance dispensing data to the Department on a monthly basis. The proposed amendments would require more frequent reporting of controlled substance dispensing data (i.e., within 24 hours after the substance was delivered). The proposed regulations also require a new reporting time frame for mail or licensed express delivery services of "not later than 72 hours after the substance was shipped from the pharmacy." Additionally, the amendments create a requirement for "zero reporting" when no controlled substances have been dispensed by a practitioner or pharmacy to ensure that at least every 14 days the Bureau of Narcotic Enforcement has been informed that no controlled substances have been dispensed. These requirements may necessitate computer programming services initially. The amendments provide for waivers of these reporting requirements when appropriate. The requirements are identical for both rural areas and non-rural areas of the State.

Costs:

For pharmacies and dispensers to meet the reporting requirements specified in this rule, an estimate of no cost to approximately \$15,000 can be anticipated. These costs are reflective of associated computer programming necessitated by the more frequent reporting of controlled substance data to the Department. The proposed amendments also provide for waivers of these requirements for economic hardship, technological limitation that are not reasonably within the control of the pharmacy, or other demonstrated exceptional circumstances. There is no fee, tax, or transactional cost associated with creating a Health Commerce System account or accessing the PMP. Estimated costs are not anticipated to be different for rural areas versus non-rural areas of the State.

Minimizing Adverse Impact:

To minimize any undue burden on a particular practitioner, the amendments provide for a waiver process for practitioners to be exempted from the duty to consult the PMP based upon technological limitations that are not reasonably within the control of the practitioner or other exceptional circumstance demonstrated by the practitioner. Additionally, the amendments provide for a reporting waiver process for pharmacies and practitioners. It is anticipated that these waiver categories will sufficiently address the burdens of rural providers.

Rural Area Participation:

During the drafting of these amendments, the Department consulted with various statewide groups whose constituencies include rural areas, e.g.: the State Education Department's Board of Pharmacy, the Pharmaceutical Society of the State of New York and the New York Chapter of the American Society of Consultant Pharmacists. Pharmacy conferences were also held quarterly for the purpose of sharing information among stakeholders in the practice of pharmacy, including representatives from the colleges of pharmacy in New York State, government agencies, regulatory agencies, and all pharmacy practice settings. The Department also consulted with the National Association of Chain Drug Stores, an organization dedicated to advancing the interests and objectives of the chain community pharmacy industry in rural and metropolitan areas, and with various other pharmacy leaders and stakeholders. Input was received from the workgroup established under Public Health Law Section 3309-a to provide guidance related to the implementation of the PMP. The amendments were drafted taking into consideration the pharmacy community's comments and suggestions with respect to the current laws and regulations and how the amendments would affect the overall dispensing process.

The Department also consulted with the Medical Society of the State of New York and the Greater New York Hospital Association.

Job Impact Statement

A Job Impact Statement is not included because the Department has concluded that the proposed regulatory amendments will not have a substantial adverse effect on jobs given that the amendments are simply implementing an underlying requirement imposed by the legislature through the Public Health Law. The amendments provide for the duty of a practitioner to consult the PMP, as well as the real-time reporting of dispensed controlled substances by pharmacies and practitioners, and will not have a substantial adverse effect upon jobs and employment opportunities.

Long Island Power Authority

NOTICE OF ADOPTION

LIPA's Tariff for Electric Service, Including Service Classification No. 16

I.D. No. LPA-11-13-00019-A

Filing Date: 2013-05-29

Effective Date: 2013-05-29

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

Action taken: The Long Island Power Authority adopted a proposal to modify its Tariff for Electric Service to change the on-peak energy delivery charge for residential and small commercial service under Service Classification No. 16 and make other revisions.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: LIPA's Tariff for Electric Service, including Service Classification No. 16.

Purpose: To change the on-peak energy delivery charge and make other miscellaneous revisions.

Text or summary was published in the March 13, 2013 issue of the Register, I.D. No. LPA-11-13-00019-P.

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

Text of rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

Revised Regulatory Impact Statement

A revised regulatory impact statement 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.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis 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.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis 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.

Revised Job Impact Statement

A revised job impact statement 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.

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.

Department of Motor Vehicles

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Points for Texting and Cell Phone Use

I.D. No. MTV-25-13-00003-EP

Filing No. 596

Filing Date: 2013-05-31

Effective Date: 2013-06-01

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

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

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

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

Specific reasons underlying the finding of necessity: It is necessary to adopt this amendment on an emergency basis, to protect the health, safety and general welfare of the citizens of New York State, effective immediately upon filing with the Department of State.

This amendment is adopted as an emergency measure to protect the motoring public from drivers who may pose a highway safety risk. This rule would increase the number of points assigned for texting and cell phone violations from three to five points. Each day distracted driving is a contributing factor in 4,000 to 8,000 crashes on our nation's highways. In 2011, 3,331 people were killed in crashes nationwide involving distracted drivers and an estimated additional 387,000 were injured in motor vehicle crashes involving distracted drivers. The number of persons who reportedly are distracted at the time of the fatal crashes has increased from 8% in 2004 to 11% in 2008. It is estimated that at any given time during daylight hours, approximately 11% of drivers are using some type of cell phone. In light of these compelling statistics, more needs to be done to curtail distracted driving. This rule will help the State's efforts to address this major highway safety problem.

Emergency action to file these regulations at this time is necessary to initiate and achieve the desired deterrent, educational and punitive objectives during the peak summer driving season, which is characterized by greater volumes, as well as an accompanying greater risk of fatalities and serious injuries.

Subject: Points for texting and cell phone use.

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

Text of emergency/proposed rule: Paragraphs (4) and (6) of subdivision (b) of section 131.3 are amended to read as follows:

(4) The following violations shall be assigned a point value of five points:

- (i) reckless driving;
- (ii) any violation involving overtaking or passing a stopped school bus[.]; and
- (iii) any violation involving the use of a mobile telephone or portable electronic device.

(6) The following violations shall be assigned a point value of three points:

- (i) any violation involving speed except where a different point value has been assigned;
- (ii) any violation constituting a failure to yield the right-of-way;
- (iii) any violation involving a railroad crossing, disobeying a traffic control signal or a stop or yield sign;
- (iv) any violation involving improper passing, changing lanes unsafely, driving to left of center of roadway, or driving in the wrong direction;
- (v) leaving the scene of a property damage incident or injury to an animal without reporting;
- (vi) any violation involving use of safety belts or seats by a child under the age of 16.

[(vii) any violation involving the use of a mobile telephone or portable electronic device.]

Subparagraph (iii) of paragraph (7) of subdivision (b) of section 131.3 is amended to read as follows:

(iii) any violation, other than a violation set forth in paragraphs (1) through (6) of this subdivision, for which suspension or revocation action is mandated upon conviction;

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 28, 2013.

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871

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: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). Section 510(3)(i) of the VTL provides that the Commissioner may suspend or revoke a driver's license for habitual or persistent violation of any provisions of such law and/or violations of any local rule or regulation in relation to traffic. Pursuant to this section of law, Part 131 establishes a point system that serves as the basis for the assessment of persistent violator status. The Department decides which violations are assigned points.

2. Legislative objectives: Section 510(3)(i) of the Vehicle and Traffic Law provides that the Department of Motor Vehicles may take license action against a motorist who persistently violates laws related to traffic. Part 131 establishes the point system, whereby specific point values are assigned for most traffic offenses. A person who accumulates 11 or more points within an 18 month period is deemed a persistent violator and is subject to a license suspension or revocation.

Part 131.3(a) provides that "all traffic violations shall be assigned a value of two points, except as otherwise prescribed in subdivision (b) of this section." Determining and setting appropriate point values for different types of violations, relative to their severity and the risk they pose, aligns with the legislative objective of sanctioning drivers who commit persistent violations of the law. Since cell phone and texting violations have serious public safety consequences, it is appropriate that such violations carry a point value commensurate with those potential consequences. Therefore, it is appropriate to raise the points for cell phone and texting violations from three to five points.

3. Needs and benefits: This proposed rule is both necessary and beneficial for the enhancement of highway safety in New York State. In 2011, 9,030 tickets were issued for texting violations, resulting in 3,470 convictions. During that same year, 248,649 tickets were issued for cell phone violations, resulting in 186,926 convictions. Numerous studies have confirmed that distracted driving, such as driving while talking on a cell phone or texting, significantly contributes to accidents and fatalities on the State's highways. AAA reports that each day distracted driving is a contributing factor in 4,000 to 8,000 crashes on our nation's highways. The National Highway Traffic Safety Administration (NHTSA) reports that nationwide in 2011, 3,331 people were killed in crashes nationwide involving distracted drivers and an estimated additional 387,000 were injured in motor vehicle crashes involving distracted drivers. The number of persons who reportedly are distracted at the time of a fatal crash has increased from 8% in 2004 to 11% in 2008. NHTSA estimates that at any given time during daylight hours, approximately 11% of drivers are using some type of cell phone. The Institute for Highway Safety reports that drivers who use hand-held cell phones are four times as likely to be involved in car crashes resulting in injury to themselves. A Carnegie Mellon Institute study concludes that driving while using a cell phone reduces the amount of brain activity associated with driving by 37 percent. Similar studies and statistics suggest that texting while driving poses an even greater highway safety danger.

In light of the overwhelming evidence that distracted driving is a significant factor contributing to highway injuries and deaths, several states have passed laws prohibiting cell phone usage and text messaging. Clearly, there is a nationwide trend to address this serious highway safety problem.

Increasing points for these two violations reinforces the message that DMV considers these violations serious offenses. Moreover, the increased points become part of the persistent violator equation. A person who accumulates 11 points within an 18 month period is deemed a persistent violator and is subject to the suspension or revocation of his or her license. This tool enables DMV to take appropriate license sanctions against a driver who may pose a highway safety risk to others.

Assigning appropriate point values to distracted driving violations is an essential component of DMV's commitment to highway safety and its effort to deter distracted driving on our highways.

Finally, this proposed rule provides that even if a person's license is required by law to be suspended or revoked as the result of a conviction for a cell phone or texting violation, points shall be assigned. Although this is an exception to the general rule that points are not assigned when a mandatory sanction results from a conviction, due to the serious nature of cell phone and texting violations, the imposition of points is appropriate in these cases.

4. Costs:

a. Cost to regulated parties and customers: There is no cost to the citizens of the State.

b. Costs to the agency and local governments: There is no cost to local governments or to DMV.

5. Local government mandates: There are no local government mandates.

6. Paperwork: There are no new paperwork requirements associated with this proposed rule.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: After reviewing the continuing and serious highway safety risks associated with various forms of distracted driving, DMV determined that it was prudent to increase points for both texting and cell phone violations.

9. Federal standards: The proposal does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The proposed rule would apply to texting and cell phone violations committed on or after the day the rule is adopted.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not attached because this rule will not have a disproportionate impact on small businesses or local governments, nor will it impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

NOTICE OF ADOPTION

Motor Vehicle Inspection

I.D. No. MTV-15-13-00001-A

Filing No. 549

Filing Date: 2013-05-29

Effective Date: 2013-06-19

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

Action taken: Amendment of section 79.7 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 302(a), (e), 303(a)(1) and (2)

Subject: Motor vehicle inspection.

Purpose: Allows for the application of an official inspection station provisional license.

Text or summary was published in the April 10, 2013 issue of the Register, I.D. No. MTV-15-13-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

New Motor Vehicle Dealer Registration

I.D. No. MTV-15-13-00002-A

Filing No. 550

Filing Date: 2013-05-29

Effective Date: 2013-06-19

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

Action taken: Amendment of section 78.4 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 415(3) and (5)

Subject: New motor vehicle dealer registration.

Purpose: Allows a new motor vehicle dealer to apply for a provisional motor vehicle dealer registration.

Text or summary was published in the April 10, 2013 issue of the Register, I.D. No. MTV-15-13-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.us

Assessment of Public Comment

The agency received no public comment.

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

Enforcement of Dealer Related Regulations

I.D. No. MTV-25-13-00004-P

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

Proposed Action: Amendment of section 78.32 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 415(9)(d)

Subject: Enforcement of dealer related regulations.

Purpose: To authorize DMV to take action against dealers who file misleading or false statements in relation to lien satisfaction filing.

Text of proposed rule: Subdivision (a) of section 78.32 is amended to read as follows:

(a) Violation of any of the provisions of Section 415 of the Vehicle and Traffic Law or of any of the regulations herein *or the submission of false or misleading information to the Commissioner pursuant to 15 NYCRR § 20.17* may result in a hearing which may lead to the suspension or revocation of the dealer's registration and any or all of the number plates.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. Section 2121(a) of the VTL requires the Commissioner of the Department of Motor Vehicles to provide a procedure for the release of a security interest in a motor vehicle. VTL Section 2121(b) permits registered dealers to provide the Commissioner with proof that a lien on a vehicle has been satisfied, and authorizes the Commissioner to promulgate regulations setting forth the types of acceptable proof in order to issue a title that discloses no lien. VTL section 415(9)(d) authorizes the Commissioner to suspend or revoke a dealer's registration for failure to comply with the Commissioner's regulations or with any provision of the VTL that is applicable thereto. Thus, the Commissioner is authorized to take action against a dealer who makes a false or misleading statement when submitting proof of satisfaction of a lien, pursuant to 15 NYCRR 20.17.

2. Legislative objectives: Section 2121(b) of the VTL, as added by Chapter 493 of the Laws of 2012, authorizes registered automobile dealers to arrange for the satisfaction of a security interest in a vehicle the dealer receives for the purpose of resale, and provides that the Department shall issue a duplicate or original title without a lien thereon for such vehicles upon the receipt of certain evidence of lien satisfaction, along with a proper application and fee. This proposed rule is in accordance with the legislative objective by establishing those proofs of satisfaction of a lien that are acceptable to the Commissioner.

3. Needs and benefits: The Department of Motor Vehicles is required by law to issue a clear title when it is presented with a proper application, the requisite statutory fee and acceptable proof of lien satisfaction from the lender acknowledging that its security interest has been released. Occasionally, a lender may take several weeks to provide a written lien release to a vehicle owner after satisfaction of the lien. Chapter 493 of the Laws of 2012 was enacted to expedite the issuance of a no-lien title, in order to facilitate the resale of a motor vehicle that was traded to a dealer with a lien at the time of the trade. The new VTL section 2121(b) will expedite this process by offering dealers who arrange for the satisfaction of a lien a procedure to demonstrate to the Department that a clean title should be issued and, consequently, such clear title shall be issued more quickly. The amendments to Section 20.17 are necessary to apprise both lenders and dealers about those proofs of lien satisfaction that the Commissioner deems acceptable. The amendments to Section 78.32 makes clear that if a dealer abuses the process by submitting false or misleading information to the Commissioner regarding the satisfaction of a lien, the dealer could face the suspension or revocation of the dealer's license.

4. Costs: There are no costs to the regulated parties other than the fee that registered dealers must pay for a duplicate title certificate. There are no costs to State agencies or local governments.

5. Local government mandates: None.

6. Paperwork: The process established by Section 20.17(b) will require dealers to provide written notice to a lienholder and to submit sufficient evidence that the dealer has tendered payment to the lienholder in an amount necessary to satisfy the lien on a vehicle.

7. Duplication: This proposal does not duplicate any law, regulation or procedure.

8. Alternatives: The Department consulted with several automobile dealer associations and representatives of the automobile lending industry about the proposed rule. The Department received written comments from the American Financial Services Association (AFSA), which represents many lenders, and a joint letter from the Greater New York Automobile Dealers Association and the New York State Automobile Dealers Association. While the Department has incorporated many of the comments into the proposed rule, not all were deemed feasible.

The lenders expressed concern that notices sent by dealers may not be addressed to the appropriate department of a lending institution, which would potentially give a lender a short time frame in which to review records necessary to verify the status of a security interest. AFSA suggested that the Department create a database that the lenders could populate with the proper addresses to which dealers should send notices under the rule. The Department lacks the resources to create such a database and believes that lenders are able to provide the proper notice address with the payoff statement. The rule requires that dealers seeking to have a lien removed from a vehicle must submit a copy of a payoff statement obtained from the lender. The Department believes that lenders could include the proper notice address on or with the payoff statement sent to the dealer.

The dealer associations objected to recording the Vehicle Identification Number (VIN) on receipts for interbank or electronic funds transfers as part of the proof of payment. The Department strongly believes that including the VIN on the receipt is necessary so that the Department may ensure that the payment is associated with the specific motor vehicle for which the lien is to be satisfied.

A no action alternative was not considered.

9. Federal standards: This rule does not exceed any minimum standards of the federal government.

10. Compliance schedule: Upon adoption of the regulation.

Regulatory Flexibility Analysis

1. Effect of rule: This proposed regulation would affect only motor vehicle dealers who seek to arrange for the release of liens on motor vehicles they obtain in a trade, by demonstrating to the Commissioner that such dealer has satisfied the lien. There are approximately 10,000 car dealers in New York State. The proposed rule has no impact on local governments.

2. Compliance requirements: Those motor vehicle dealers who wish to arrange for the release of a motor vehicle lien would be required to provide the Commissioner with certain documents within a certain time period in accordance with the Commissioner's procedures. The documents would demonstrate that the dealer has satisfied the lien.

3. Professional services: This regulation would not require new professional services.

4. Compliance costs: The regulation would not impose any extra costs on the dealers who choose to participate in the process.

5. Economic and technological feasibility: This proposal adds no new economic or technological requirements on motor vehicle dealers.

6. Minimizing adverse impact: This proposal has no adverse impact on motor vehicle dealers. In fact, it will help such dealers to more expeditiously obtain clear titles to vehicles they take in trade. In addition, as noted below, the Department consulted with several dealer associations to obtain their input on the proposed rules.

7. Small business and local government participation: As noted in the Regulatory Impact Statement, the Department consulted with representatives of the automobile lending industry and several dealer associations about the proposed rule and incorporated their comments into the rule where feasible.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

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

Proof of Satisfaction of Lien by Dealers

I.D. No. MTV-25-13-00005-P

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

Proposed Action: Amendment of section 20.17 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 2121(a) and (b)

Subject: Proof of satisfaction of lien by dealers.

Purpose: To establish procedures for dealers to demonstrate that they have satisfied a lien in order to obtain a clear title.

Text of proposed rule: Section 20.17 is amended to read as follows:

(a) Whenever a lien is satisfied, the lienholder shall immediately submit the notice of recorded lien [properly completed] *showing satisfaction thereof* to the title holder or his designee. The title holder or his designee may then submit such notice of recorded lien together with his certificate of title to the Title Bureau, Department of Motor Vehicles, [South Mall] 6 Empire State Plaza, Albany, New York 12228. A new certificate of title will then be issued to the owner with the satisfied lien eliminated and the satisfaction of lien will be noted in the records of the department.

(b) *Whenever a dealer registered under Section 415 of the Vehicle and Traffic Law receives a motor vehicle for the purpose of resale and arranges for the satisfaction of any lien on such vehicle, but the lienholder fails to immediately upon receipt of good funds submit the notice of recorded lien indicating satisfaction of such lien to the vehicle owner named on the title, the dealer may request that the Commissioner issue either a duplicate title certificate without such lien included thereon or a title certificate without such lien included thereon. Such requests shall be mailed to the Commissioner at NYS Department of Motor Vehicles, Title Bureau, PO Box 2222, Albany, NY, 12220 and shall include the following:*

(1) *An application for a duplicate title certificate or for a title certificate properly completed by the owner of the motor vehicle, accompanied by the appropriate fee.*

(2) *If the dealer and owner desire the certificate to be mailed to the dealer, a written consent signed by the owner permitting the Commissioner to mail the duplicate title certificate or title certificate to the dealer at an address designated in such written consent.*

(3) *A copy of the dealer's written notice submitted to the lienholder that the dealer shall seek to arrange for the satisfaction and release of the lienholder's lien pursuant to Section 2121(b) of the Vehicle and Traffic Law, together with evidence, such as an overnight delivery confirmation or a certified mail return receipt, that such notice was received by the lienholder not less than two weeks prior the dealer's application for a duplicate title certificate or title certificate. The dealer's notice shall be sent to an address provided by the lienholder for receiving correspondence and shall be in 14 point type or larger and shall read as follows:*

NOTICE OF DEALER'S REQUEST FOR RELEASE OF MOTOR VEHICLE LIEN

Motor Vehicle Information

Vehicle Identification Number (VIN): _____

Name of Last Owner (if known): _____

You are hereby notified that [Name of Dealer] (the "Dealer") has arranged for the full payment of a loan held by you on the above-referenced motor vehicle. To date, the Dealer understands that you have not submitted the required lien release paperwork to the owner of the motor vehicle.

Please be advised that if you do not promptly submit such paperwork to the owner of the motor vehicle, the Dealer shall, two weeks from the date of your receipt of this notice, request that DMV issue a duplicate or new certificate of title for the above-referenced vehicle without your lien included thereon pursuant to Section 2121(b) of the New York Vehicle and Traffic Law. Such action by DMV will eliminate your perfected security interest in the vehicle.

If you have any questions about this notice, you should immediately contact the Dealer at [Mailing Address], [Telephone Number], [E-mail Address (optional)]. Any questions about the lien release process may be directed to Title Bureau, NYS Department of Motor Vehicles, 6 Empire State Plaza, Albany, New York 12228, by telephone at (518) 486-4714 or by email at an address to be designated by the Title Bureau.

(4) A copy of a written payoff statement from the lienholder to the dealer, on the lienholder's letterhead, that contains, at a minimum, the VIN of the vehicle associated with the lien to be satisfied, the amount required to satisfy such lien, and the date through which such amount will be effective. The payoff statement may also contain a per diem amount for the period after such effective date.

(5) Sufficient evidence that the dealer has tendered payment to the lienholder in the amount necessary to satisfy the lien as represented by the lienholder. Such evidence shall be in one of the following forms: (i) a transmission receipt for an interbank or electronic funds transfer that evidences the amount transferred and the VIN of the vehicle associated with the lien being satisfied; (ii) a copy of a bank or cashier's check delivered to the lienholder that evidences the amount transferred and the VIN of the vehicle associated with the lien being satisfied; or (iii) a written statement from the lienholder, on its letterhead, that evidences the VIN of the vehicle associated with the lien being satisfied and includes an acknowledgement that such lien has been satisfied in full.

(6) A signed statement from the dealer that it has not received any notice from the lienholder disputing the amount tendered pursuant to paragraph (5) of this subdivision as insufficient to satisfy the lien.

The Commissioner shall promptly review the information submitted by the dealer, and, provided that the Commissioner finds that sufficient payment has been made to fully satisfy the lien, the Commissioner shall issue a duplicate title certificate without such lien included thereon or a title certificate without such lien included thereon within fifteen business days after receipt of all required information and fees.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871

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: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. Section 2121(a) of the VTL requires the Commissioner of the Department of Motor Vehicles to provide a procedure for the release of a security interest in a motor vehicle. VTL Section 2121(b) permits registered dealers to provide the Commissioner with proof that a lien on a vehicle has been satisfied, and authorizes the Commissioner to promulgate regulations setting forth the types of acceptable proof in order to issue a title that discloses no lien. VTL section 415(9)(d) authorizes the Commissioner to suspend or revoke a dealer's registration for failure to comply with the Commissioner's regulations or with any provision of the VTL that is applicable thereto. Thus, the Commissioner is authorized to take action against a dealer who makes a false or misleading statement when submitting proof of satisfaction of a lien, pursuant to 15 NYCRR 20.17.

2. Legislative objectives: Section 2121(b) of the VTL, as added by Chapter 493 of the Laws of 2012, authorizes registered automobile dealers to arrange for the satisfaction of a security interest in a vehicle the dealer receives for the purpose of resale, and provides that the Department shall issue a duplicate or original title without a lien thereon for such vehicles upon the receipt of certain evidence of lien satisfaction, along with a proper

application and fee. This proposed rule is in accordance with the legislative objective by establishing those proofs of satisfaction of a lien that are acceptable to the Commissioner.

3. Needs and benefits: The Department of Motor Vehicles is required by law to issue a clear title when it is presented with a proper application, the requisite statutory fee and acceptable proof of lien satisfaction from the lender acknowledging that its security interest has been released. Occasionally, a lender may take several weeks to provide a written lien release to a vehicle owner after satisfaction of the lien. Chapter 493 of the Laws of 2012 was enacted to expedite the issuance of a no-lien title, in order to facilitate the resale of a motor vehicle that was traded to a dealer with a lien at the time of the trade. The new VTL section 2121(b) will expedite this process by offering dealers who arrange for the satisfaction of a lien a procedure to demonstrate to the Department that a clean title should be issued and, consequently, such clear title shall be issued more quickly. The amendments to Section 20.17 are necessary to apprise both lenders and dealers about those proofs of lien satisfaction that the Commissioner deems acceptable. The amendments to Section 78.32 makes clear that if a dealer abuses the process by submitting false or misleading information to the Commissioner regarding the satisfaction of a lien, the dealer could face the suspension or revocation of the dealer's license.

4. Costs: There are no costs to the regulated parties other than the fee that registered dealers must pay for a duplicate title certificate. There are no costs to State agencies or local governments.

5. Local government mandates: None.

6. Paperwork: The process established by Section 20.17(b) will require dealers to provide written notice to a lienholder and to submit sufficient evidence that the dealer has tendered payment to the lienholder in an amount necessary to satisfy the lien on a vehicle.

7. Duplication: This proposal does not duplicate any law, regulation or procedure.

8. Alternatives: The Department consulted with several automobile dealer associations and representatives of the automobile lending industry about the proposed rule. The Department received written comments from the American Financial Services Association (AFSA), which represents many lenders, and a joint letter from the Greater New York Automobile Dealers Association and the New York State Automobile Dealers Association. While the Department has incorporated many of the comments into the proposed rule, not all were deemed feasible.

The lenders expressed concern that notices sent by dealers may not be addressed to the appropriate department of a lending institution, which would potentially give a lender a short time frame in which to review records necessary to verify the status of a security interest. AFSA suggested that the Department create a database that the lenders could populate with the proper addresses to which dealers should send notices under the rule. The Department lacks the resources to create such a database and believes that lenders are able to provide the proper notice address with the payoff statement. The rule requires that dealers seeking to have a lien removed from a vehicle must submit a copy of a payoff statement obtained from the lender. The Department believes that lenders could include the proper notice address on or with the payoff statement sent to the dealer.

The dealer associations objected to recording the Vehicle Identification Number (VIN) on receipts for interbank or electronic funds transfers as part of the proof of payment. The Department strongly believes that including the VIN on the receipt is necessary so that the Department may ensure that the payment is associated with the specific motor vehicle for which the lien is to be satisfied.

A no action alternative was not considered.

9. Federal standards: This rule does not exceed any minimum standards of the federal government.

10. Compliance schedule: Upon adoption of the regulation.

Regulatory Flexibility Analysis

1. Effect of rule: This proposed regulation would affect only motor vehicle dealers who seek to arrange for the release of liens on motor vehicles they obtain in a trade, by demonstrating to the Commissioner that such dealer has satisfied the lien. There are approximately 10,000 car dealers in New York State. The proposed rule has no impact on local governments.

2. Compliance requirements: Those motor vehicle dealers who wish to arrange for the release of a motor vehicle lien would be required to provide the Commissioner with certain documents within a certain time period in accordance with the Commissioner's procedures. The documents would demonstrate that the dealer has satisfied the lien.

3. Professional services: This regulation would not require new professional services.

4. Compliance costs: The regulation would not impose any extra costs on the dealers who choose to participate in the process.

5. Economic and technological feasibility: This proposal adds no new economic or technological requirements on motor vehicle dealers.

6. Minimizing adverse impact: This proposal has no adverse impact on motor vehicle dealers. In fact, it will help such dealers to more expedi-

tiously obtain clear titles to vehicles they take in trade. In addition, as noted below, the Department consulted with several dealer associations to obtain their input on the proposed rules.

7. Small business and local government participation: As noted in the Regulatory Impact Statement, the Department consulted with representatives of the automobile lending industry and several dealer associations about the proposed rule and incorporated their comments into the rule where feasible.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendments to Person-Centered Behavioral Intervention

I.D. No. PDD-25-13-00002-EP

Filing No. 594

Filing Date: 2013-05-31

Effective Date: 2013-05-31

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

Proposed Action: Amendment of section 633.16 of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The emergency adoption of these amendments is necessary to protect the health, safety, and welfare of individuals receiving, or in need of, behavioral intervention services and staff providing services.

OPWDD recently promulgated regulations addressing person-centered behavioral interventions. The regulations included specific requirements regarding the development, monitoring, implementation, and approval of behavior support plans and regarding the qualifications of parties responsible for developing and monitoring the plans. The existing regulations specify that all new behavior support plans must comply with the new requirements, including the requirements regarding the qualifications of parties authorized to develop and monitor the plans, effective May 31, 2013.

Since the time that the person-centered behavioral intervention regulations were adopted, OPWDD has learned that some provider agencies have had difficulty recruiting parties who meet the qualifications contained in the regulations. The emergency/proposed regulations expand the minimum qualifications of parties authorized to develop and monitor behavior support plans and other plans to address co-existing psychiatric disorders. OPWDD expects that the emergency/proposed regulations will enable provider agencies to retain certain existing staff members, and to recruit and hire parties who possess other acceptable types of educational, training, and work experience that were not included in the original regulations.

If OPWDD did not promulgate these regulations on an emergency basis, some individuals who need behavioral intervention services would not be able to receive the services because some provider agencies would not be able to recruit staff or consultants who meet the qualifications contained in the original regulations. The absence of behavioral intervention services can lead to crisis situations with tragic consequences, including serious injury or death. Clearly the absence of behavioral intervention services could compromise the health, safety and welfare of individuals in need of those services, and others in their living, habilitation, and work environments.

OPWDD was not able to use the regular rulemaking process established

by the State Administrative Procedure Act because it was not fully aware of the difficulties provider agencies encountered recruiting qualified staff within the necessary timeframes. The emergency regulations are being promulgated on May 31, 2013 to coincide with the compliance schedule of the original regulation on behavioral intervention. The original regulation required that all new behavior support plans meet specified requirements, including the requirements regarding the qualifications of parties authorized to develop and monitor the plans, effective May 31, 2013.

At this juncture, any delay will result in continued exposure to avoidable health and safety risks.

The emergency/proposed regulations also amend the original regulations to clarify that the use of physical intervention techniques and/or mechanical restraining devices to facilitate emergency evacuations/drills is not considered a restrictive/intrusive intervention that requires inclusion in a behavior support plan. The addition of this clarifying language will eliminate confusion that could have impeded the use of these techniques and devices during emergency evacuations and drills. In order to successfully evacuate a building during an emergency situation (such as a fire) it is sometimes necessary to use these techniques and devices. Reluctance to use the techniques and devices when warranted in an emergency (or a drill) because of the perception that such use might be precluded in the absence of a behavior support plan can have serious consequences for the health, safety and welfare of individuals receiving services and facility staff. Serious injury and death can result from delay or failure to successfully evacuate in an emergency.

Subject: Amendments to Person-Centered Behavioral Intervention.

Purpose: To expand minimum qualifications of parties authorized to develop and monitor behavior support plans & make technical changes.

Text of emergency/proposed rule: Paragraph 633.16(b)(9) is amended as follows:

(9) Committee, behavior plan/human rights. A committee which has the responsibility to protect the rights of persons whose behavior support plans incorporate[s] the use of any restrictive/intrusive intervention and/or limitation on a person's rights in order to prevent, manage, and/or control challenging behavior, and which exercises this responsibility through the process of reviewing and approving proposed behavior support plans.

Paragraph 633.16(b)(10) is amended as follows:

(10) Committee, informed consent. A committee which has the authority to give informed consent for a behavior support plan incorporating the use of any restrictive/intrusive intervention *and/or the use of medication to treat a co-occurring diagnosed psychiatric disorder, or for short-term use of medication with no behavior support plan*, when the individual lacks capacity to consent and there is no other authorized surrogate available (except for a court). (See subdivision (g) of this section.)

Paragraph 633.16(b)(23) is amended as follows:

(23) Intervention, physical. Those intervention techniques, or the adaptations of such, that either include[;] hands-on techniques that deflect, protect from, or release hits, kicks, or grabs by persons receiving services toward others in their environment; [;]...

Paragraph 633.16(b)(24) is amended as follows:

(24) Intervention, restrictive/intrusive. These interventions include the following: ...

(iv) the use of medication for the [sole] purpose of preventing, modifying, or controlling challenging behavior that is not associated with a [diagnosed] co-occurring *diagnosed* psychiatric [condition] *disorder* (see paragraph (j)(5) of this section); and

(v) other professionally accepted methods to modify or control behavior which are determined by agency/facility policy to be restrictive/intrusive interventions because they [impose] *may present* [a] risk to a person's protection or encroach unduly on a person's normal activities (e.g., response cost, overcorrection, negative practice, and satiation).

Physical [I]ntervention techniques and/or mechanical restraining devices used to facilitate emergency evacuations/drills or medical/dental exams, procedures, and related healthcare activities (and to protect individuals, [and] healthcare providers, and others during such exams, procedures, and activities) are not considered to be restrictive/intrusive interventions that require inclusion in a behavior support plan. Such interventions may be incorporated in other individualized plans to address these situations.

Paragraph 633.16(b)(27) is amended as follows:

(27) Medication. For the purposes of this section, a pharmaceutical agent prescribed and used either to prevent, modify, or control challenging behavior, or to treat the symptoms of co-occurring diagnosed psychiatric [conditions] *disorders*, ... (See paragraph (j)(5)(vi) of this section for requirements specific to the use of medications used to treat a co-occurring *diagnosed* psychiatric [condition] *disorder*.)

Paragraph 633.16(b)(29) is amended as follows:

(29) Plan, monitoring. A plan developed by a *licensed psychologist, licensed psychiatric nurse practitioner, licensed clinical social worker, or*

a [B]behavioral [I] intervention [S]specialist[, licensed psychologist, or licensed clinical social worker, which] that identifies the target symptoms of a [diagnosed] co-occurring *diagnosed* psychiatric disorder [which] that are to be prevented, reduced, or eliminated. ...

Existing paragraph 633.16(b)(32) is deleted and a new paragraph 633.16(b)(32) is added as follows:

(32) *Specialist, Behavioral Intervention (BIS)*.

(i) *Level 1 BIS*. In order for a party to be a Level 1 BIS, the party must:

(a) have the following educational background:

(1) at least a Master's degree from a program in a clinical or treatment field of psychology, social work, school psychology, or applied psychology as it relates to human development and clinical interventions, and documented training in assessment techniques and behavior support plan development; or

(2) a National Board certification in behavior analysis (BCBA) and a Master's degree in:

(i) behavior analysis; or

(ii) a field closely related to clinical or community psychology that is approved by OPWDD; or

(3) a New York State license in mental health counseling; and

(b) have at least five (5) years of experience:

(1) working directly with individuals with developmental disabilities, including the development, implementation, and monitoring of behavior support plans; and/or

(2) providing supervision and training to others in the implementation of behavior support plans.

(ii) *Level 2 BIS*. In order for a party to be a Level 2 BIS, the party must meet the qualifications outlined in clauses (a), (b), or (c) as follows:

(a) The party must have a BCBA and a Master's degree in:

(1) behavior analysis; or

(2) a field closely related to clinical or community psychology that is approved by OPWDD; or

(b) The party must:

(1) have either:

(i) a Master's degree in a clinical or treatment field of psychology, social work, school psychology, applied psychology as it relates to human development and clinical intervention, or a related human services field; or

(ii) a New York State license in mental health counseling;

and

(2) have or obtain OPWDD-approved specialized training or experience in functional assessment techniques and behavior support plan development; or

(c) The party must:

(1) have a Bachelor's degree in a human services field; and

(2) have provided behavioral services for an agency in the OPWDD system as of, and continuously since, December 31, 2012; and

(3) either:

(i) is actively working toward a Master's degree in an applied area of psychology, social work, or special education; or

(ii) completes at least one graduate-level course in an applied health service area of applied psychology, social work, or special education each year.

(iii) The qualifying Master's degrees referenced in this paragraph, including any degree obtained through an online educational or distance learning program, must have been awarded by a regionally accredited college or university, or one recognized by the NYS Education Department as following acceptable educational practices. If the Master's degree was awarded by an educational institution outside the United States and its territories, the party must provide independent verification of equivalency from one of the approved entities used by the NYS Department of Civil Service for educational equivalency reviews.

(iv) Notwithstanding any other provision of this section, parties who are employed by New York State and function in a title included in a New York State Civil Service title series shall provide behavioral services or supervision of such services described in this section as included in their job descriptions.

(v) Notwithstanding any other provision of this paragraph, a party may be considered a BIS in the event that OPWDD has approved a waiver of a specific required qualification upon application of a provider (See paragraph (c)(12) of this section).

Paragraph 633.16(d)(1) is amended as follows:

(1) Prior to the development of a behavior support plan to address challenging behavior that is not solely the result of a [diagnosed] co-occurring *diagnosed* psychiatric disorder, ...

Paragraph 633.16(e)(9) is amended as follows:

(9) Nothing in this subdivision (633.16(e)) shall be construed to prevent the use of medication to prevent, modify, or control challenging ...

Paragraph 633.16(f)(3) is amended as follows:

(3) ... except for monitoring plans in which medication is used solely for the treatment of a co-occurring diagnosed psychiatric [condition] *disorder*. The term "psychiatric [condition] *disorder*" means those psychiatric [conditions] *disorders* which are recognized as such by the American Psychiatric Association or World Health Organization. For the purposes of this section, the term "co-occurring psychiatric [condition] *disorder*" does not refer ...

Paragraph 633.16(g)(1) is amended by the addition of a new subparagraph (ii) and re-numbering of existing subparagraph (ii) to (iii) as follows:

(ii) *Written informed consent is required prior to implementation of a physician's order for planned use of medication to treat a co-occurring diagnosed psychiatric disorder (See subparagraph 633.16(j)(5)(ii)). However, if written informed consent cannot be obtained within a reasonable period of time prior to the initiation or continuance of a medication, verbal consent may be accepted only for the period of time before written informed consent can be reasonably obtained. Verbal consent must be witnessed by two members of the staff, and documented in the person's record. This verbal consent is valid for a period of up to 45 days and may not be renewed.*

Paragraph 633.16(h)(3) and subparagraph 633.16(3)(iv) are amended as follows:

(3) Medication refusal. If an individual receiving services refuses to take medication to prevent, modify, or control challenging behavior or to treat a co-occurring diagnosed psychiatric [condition] *disorder*, ...

(iv) If repeated attempts to resolve the issue of refusal of medication intended to modify or control challenging behavior or to treat a diagnosed psychiatric [condition] *disorder* are unsuccessful, and the agency considers the administration of the medication to be necessary for effective treatment of the individual's [condition] *disorder*, ...

Clause 633.16(j)(5)(i)(b) is amended as follows:

(b) The use of medication to prevent, modify, or control challenging behavior or to treat symptoms of a [diagnosed] co-occurring *diagnosed* psychiatric disorder shall not: ...

Clause 633.16(j)(5)(i)(c) is amended as follows:

(c) The use of medication to prevent, modify, or control challenging behavior, or to treat a co-occurring diagnosed psychiatric disorder, not in conformance with this paragraph, ...

Clause 633.16(j)(5)(i)(d) is amended as follows:

(d) A semi-annual medication regimen review that includes any medications prescribed to treat a co-occurring diagnosed psychiatric disorder, or to prevent, modify, or control[, modify or eliminate] challenging behavior(s), ...

Clause 633.16(j)(5)(i)(f) is amended as follows:

(f) ... (See subparagraph (b)(13)(2)(ii) of this section for the basic elements of the information necessary for informed consent.)

Clause 633.16(j)(5)(i)(g) is amended as follows:

(g) Lack of informed consent for, or the refusal of, medication intended to prevent, modify, or control challenging behavior, or medication used to treat a co-occurring diagnosed psychiatric [condition] *disorder*, is addressed in subdivision (h) of this section.

Clause 633.16(j)(5)(ii)(a) is amended as follows:

(a) Medication to prevent, modify, or control[, or modify] challenging behavior, or to [prevent or reduce] treat symptoms of a [diagnosed] co-occurring *diagnosed* psychiatric [condition] *disorder*, must be administered only as an integral part of a behavior support plan or monitoring plan, in conjunction with other interventions which are specifically directed toward the potential reduction and eventual elimination of the challenging behavior(s) or target symptoms of the [diagnosed] co-occurring *diagnosed* psychiatric [condition] *disorder*.

Clause 633.16(j)(5)(ii)(e) is amended as follows:

(e) Additional requirements concerning the use of medication to treat a co-occurring diagnosed psychiatric [condition] *disorder* are found in subparagraph (vi) of this paragraph.

Clause 633.16(j)(5)(iii)(a) is amended as follows:

(a) "As-needed" (also known as "PRN") orders for medication to prevent, modify, or control challenging behavior, or to treat [reduce] symptoms of a [diagnosed] co-occurring *diagnosed* psychiatric [condition] *disorder*, are considered planned use and must be incorporated in and documented as part of a behavior support plan or a monitoring plan.

Subclause 633.16(j)(5)(iii)(c)(1) is amended as follows:

(1) the conditions under which the "as-needed" medication is to be administered, including the nature and degree of the individual's behavior(s) or symptoms, and the prescriber's recommendations regarding proximity to any scheduled medication administration;

Clause 633.16(j)(5)(iii)(g) is amended as follows:

(g) Each use of an as-needed medication when used in conjunction with a restrictive physical intervention technique to prevent, modify, or control challenging behavior shall be reported electronically to OPWDD in the form and format specified by OPWDD.

Clause 633.16(j)(5)(iv)(a) is amended as follows:

(a) Medication may be administered in an emergency, without informed consent, with the express intent of controlling a person's challenging behavior or acute symptoms of a [diagnosed] co-occurring *diagnosed* psychiatric [condition] *disorder* when: ...

Clause 633.16(j)(5)(iv)(d) is amended as follows:

(d) The emergency use of medication to [manage] *control* challenging behavior or acute symptoms of a [diagnosed] co-occurring *diagnosed* psychiatric [condition] *disorder* ...

Clause 633.16(j)(5)(iv)(e) is amended as follows:

(e) Whenever it is or has been necessary to [utilize] *use* any medication to control challenging behavior or acute symptoms of a [diagnosed] co-occurring *diagnosed* psychiatric [condition] *disorder* in an emergency, ...

Clause 633.16(j)(5)(iv)(f) is amended as follows:

(f) Each use of an emergency medication [solely] to control challenging behavior shall be reported electronically to OPWDD in the form and format specified by OPWDD.

Clause 633.16(j)(5)(v)(b) is amended as follows:

(b) In the absence of a behavior support plan [which] *that* incorporates the use of a specific medication(s) [, medication] to *prevent*, modify, or control challenging behavior, *such medication* may be administered on a short-term basis when all of the following conditions are met: ...

Clause 633.16(j)(5)(v)(d) is amended as follows:

(d) ... The program planning team shall determine if it is necessary to develop a behavior support plan to *prevent*, modify, or control the behavior or to modify an existing plan of services, or shall establish the criteria for a future decision that a plan will be needed. ...

Clause 633.16(j)(5)(v)(e) is amended as follows:

(e) Without incorporation into a behavior support plan and written informed consent, the administration of the medication shall not continue for more than [30] *45* consecutive days [and no more than 45 days in a calendar year].

Subparagraph 633.16(j)(5)(vi) is amended and re-numbered as follows:

(vi) Medication use to treat a co-occurring diagnosed psychiatric [condition] *disorder*. [(a)] Medication may be used as part of the treatment for the symptoms of a co-occurring diagnosed psychiatric [condition] *disorder*, including challenging behavior that occurs exclusively or almost exclusively as a result of that [condition] *disorder*. *In such circumstances*, [T]he following requirements must be met:

[(1)](a) In order to be considered "medication to treat a co-occurring diagnosed psychiatric [condition] *disorder*," the medication must be prescribed for the treatment of a specific psychiatric [condition] *disorder*, in a manner consistent with generally accepted psychiatric practice.

[(2)](b) The term "psychiatric [condition] *disorder*" means those psychiatric [conditions] *disorders* which are recognized as such by the American Psychiatric Association or World Health Organization. For the purposes of this section, the term "co-occurring psychiatric [condition] *disorder*" does not ...

[(3)](c) ...

[(4)](d) The use of the medication shall be consistent with accepted standards of clinical practice, including treatment of the symptoms of the diagnosed psychiatric [condition] *disorder*.

[(5)](e) The symptoms and diagnosis of the co-occurring psychiatric [condition] *disorder* must be documented.

[(6)](f) Target symptoms for the psychiatric [condition] *disorder* shall be identified ...

[(7)](g) The use of medication and the target symptoms shall be specified and documented in a written monitoring plan. The plan [should] *must* specify how progress reflected in symptom reduction and relevant functional improvement, or lack of progress, will be measured and documented. ...

[(8)](h) ...

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 28, 2013.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director of Regulatory Affairs, OPWDD, 44 Holland Avenue, 3rd floor, 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 will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs and services in the area of care, treatment, rehabilitation, education and training of persons with developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OPWDD has the statutory authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs and provision of services and facilities pursuant to the New York State Mental Hygiene Law Section 16.00.

2. Legislative Objectives:

These emergency/proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The emergency/proposed amendments would improve the quality of services in the OPWDD system and enable service providers to provide needed protections to individuals with challenging behaviors.

3. Needs and Benefits:

OPWDD recently promulgated regulations addressing person-centered behavioral interventions. The regulations included specific requirements regarding the development, monitoring, implementation, and approval of behavior support plans and regarding the qualifications of parties responsible for developing and monitoring the plans. The existing regulations specify that all new behavior support plans must comply with the new requirements, including the requirements regarding the qualifications of parties authorized to develop and monitor the plans, effective May 31, 2013.

Since the time that the person-centered behavioral intervention regulations were adopted, OPWDD has learned that some provider agencies have had difficulty recruiting parties who meet the qualifications contained in the regulations. The emergency/proposed regulations expand the minimum qualifications of parties authorized to develop and monitor behavior support plans, and other plans to address co-existing psychiatric disorders. OPWDD expects that the emergency/ proposed regulations will enable provider agencies to retain certain existing staff members, and to recruit and hire parties who possess other acceptable types of educational, training, and work experience that were not included in the original regulations.

OPWDD determined that the emergency/proposed regulations are needed because some individuals who need behavioral intervention services would not be able to receive the services as some provider agencies would not be able to recruit staff or consultants who meet the qualifications contained in the original regulations. A lack of behavior support services can present unnecessary risks for crises and tragic consequences, including serious injury or death. OPWDD expects that the emergency/ proposed regulations will enhance the health, safety, and welfare of individuals in need of services and those in their living, habilitation, and work environments.

The emergency/proposed regulations also amend the original regulations to clarify that the use of physical intervention techniques and/or mechanical restraining devices to facilitate emergency evacuations/drills is not considered a restrictive/intrusive intervention that requires inclusion in a behavior support plan. The addition of this clarifying language will eliminate confusion that could have impeded the use of these techniques and devices during emergency evacuations and drills. In order to successfully evacuate a building during an emergency situation (such as a fire) it is sometimes necessary to use these techniques and devices. Reluctance to use the techniques and devices when warranted in an emergency (or, when necessary, during a drill) because of the perception that such use might be precluded in the absence of a behavior support plan can have serious consequences for the health, safety and welfare of individuals receiving services and facility staff.

In addition, the emergency/proposed regulations include non-substantive changes to ensure consistency in the use of clinical terminology and correct typographical errors in the existing regulations. The emergency/proposed regulations also clarify reporting requirements on reporting the use of PRN medications consistent with existing OPWDD policy requirements.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

There are no anticipated impacts on Medicaid rates, prices or fees. Consequently, there is no impact on the federal government, New York State or local governments due to changes in Medicaid expenditures. There are no costs to OPWDD as a provider of services.

b. Costs to private regulated parties:

There are no initial capital investment costs. The original regulations included potential for initial non-capital expenses related to the costs of hiring new staff and/or consultants to develop and monitor behavioral intervention services, and training existing staff; however, the emergency/

proposed regulations expand the minimum qualifications of parties authorized to develop and monitor behavior support plans, and other plans to address co-existing psychiatric disorders. OPWDD expects that the emergency/proposed regulations will enable provider agencies to retain certain existing staff members. This change creates potential for savings as the need to orient and train new staff will be avoided. In addition, there may be some cost savings resulting from employing individuals with lesser qualifications.

5. Local Governmental Mandates:

There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork:

There are no new paperwork requirements associated with the emergency/proposed regulations.

7. Duplication:

The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives:

OPWDD considered alternative combinations of education and credentials to establish qualifications for parties authorized to develop and monitor behavior support plans, and determined that the qualifications included in the emergency/proposed regulations achieve the proper balance of expanding the pool of qualified parties and enabling agencies to provide needed behavioral intervention services, without compromising the quality of services provided.

9. Federal Standards:

The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule:

The emergency regulations are being promulgated on May 31, 2013 to coincide with the compliance schedule of the original regulations on person-centered behavioral intervention. The original regulations required that all new behavior support plans meet specified requirements, including the requirements regarding the qualifications of parties authorized to develop and monitor the plans, effective May 31, 2013.

Regulatory Flexibility Analysis

OPWDD is not submitting a Regulatory Flexibility Analysis for small businesses and local governments for these emergency/proposed regulations because the regulations will not impose any adverse economic impact or significant reporting, recordkeeping, or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

OPWDD recently promulgated regulations addressing person-centered behavioral interventions. The regulations included specific requirements regarding the development, monitoring, implementation, and approval of behavior support plans and regarding the qualifications of parties responsible for developing and monitoring the plans. The purpose of the emergency/proposed regulations is to expand minimum qualifications of parties authorized to develop and monitor behavior support plans for individuals with intellectual disabilities.

Since the time that the person-centered behavioral intervention regulations were adopted, OPWDD has learned that some provider agencies, including small provider agencies, have had difficulty recruiting parties who meet the qualifications contained in the regulations. OPWDD expects that the expanded minimum qualifications will enable provider agencies to retain certain existing staff members, and to recruit and hire parties who possess other acceptable types of educational, training, and work experience that were not included in the existing regulations.

The emergency/proposed regulations also amend the original regulations to clarify that the use of physical intervention techniques and/or mechanical restraining devices to facilitate emergency evacuations/drills are not considered restrictive/intrusive interventions that require inclusion in a behavior support plan.

In addition, the emergency/proposed regulations include non-substantive changes to ensure consistency in the use of clinical terminology and to correct typographical errors in the existing regulations. The emergency/proposed regulations also clarify reporting requirements on reporting the use of PRN medications consistent with existing OPWDD policy requirements.

The emergency/proposed regulations will have no adverse impact, or impose additional costs, paperwork, or compliance requirements, on small businesses or local governments.

Rural Area Flexibility Analysis

OPWDD is not submitting a Rural Area Flexibility Analysis for these emergency/proposed regulations because the regulations will not impose any adverse impact or significant reporting, record keeping, or other compliance requirements on public or private entities in rural areas. There

will be no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

OPWDD recently promulgated regulations addressing person-centered behavioral interventions. The regulations included specific requirements regarding the development, monitoring, implementation, and approval of behavior support plans and regarding the qualifications of parties responsible for developing and monitoring the plans. The purpose of the emergency/proposed regulations is to expand minimum qualifications of parties authorized to develop and monitor behavior support plans for individuals with intellectual disabilities.

Since the time that the person-centered behavioral intervention regulations were adopted, OPWDD has learned that some provider agencies, particularly those providing services in rural areas, have had difficulty recruiting parties who meet the qualifications contained in the regulations. OPWDD expects that the expanded minimum qualifications will enable provider agencies to retain certain existing staff members, and to recruit and hire parties who possess other acceptable types of educational, training, and work experience that were not included in the existing regulations. OPWDD expects that this will be particularly helpful to providers in rural areas where access to licensed clinicians and other professionals is often limited.

The emergency/proposed regulations also amend the original regulations to clarify that the use of physical intervention techniques and/or mechanical restraining devices to facilitate emergency evacuations/drills are not considered restrictive/intrusive interventions that require inclusion in a behavior support plan.

In addition, the emergency/proposed regulations include non-substantive changes to ensure consistency in the use of clinical terminology and to correct typographical errors in the existing regulations. The emergency/proposed regulations also clarify reporting requirements on reporting the use of PRN medications consistent with existing OPWDD policy requirements.

The emergency/proposed regulations will have no adverse impact, or impose additional costs, paperwork, or compliance requirements, on public or private entities in rural areas.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this emergency/proposed rule making because the rule making will not have a substantial adverse impact on jobs or employment opportunities.

OPWDD recently promulgated regulations addressing person-centered behavioral interventions. The regulations included specific requirements regarding the development, monitoring, implementation, and approval of behavior support plans and regarding the qualifications of parties responsible for developing and monitoring the plans. The purpose of the emergency/proposed regulations is to expand minimum qualifications of parties authorized to develop and monitor behavior support plans for individuals with intellectual disabilities.

Since the time that the person-centered behavioral intervention regulations were adopted, OPWDD has learned that some provider agencies have had difficulty recruiting parties who meet the qualifications contained in the regulations. OPWDD expects that the expanded minimum qualifications will enable provider agencies to retain certain existing staff members, and to recruit and hire parties who possess other acceptable types of educational, training, and work experience that were not included in the existing regulations. The emergency/proposed regulations are not expected to have any impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Approval of Transfer and Lightened Regulation of Regulated Utility Assets at the Eastman Park

I.D. No. PSC-07-13-00016-A

Filing Date: 2013-05-30

Effective Date: 2013-05-30

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

Action taken: On 5/30/13, the PSC adopted an order approving the transfer and lightened regulation of regulated utility assets at the Eastman Park from Eastman Kodak Company to RED-Rochester LLC.

Statutory authority: Public Service Law, sections 5(1)(b), (c), (f), 64, 65,

66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 89-a, 89-b, 89-c, 89-d, 89-e, 89-f, 89-g, 89-h, 89-i, 89-j, 105 - 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Approval of transfer and lightened regulation of regulated utility assets at the Eastman Park.

Purpose: To approve the transfer and lightened regulation of regulated utility assets at the Eastman Park.

Substance of final rule: The Commission, on May 30, 2013, adopted an order approving the transfer of regulated utility assets at the Eastman Business Park from Eastman Kodak Company to RED-Rochester LLC (RED). In addition, the Commission approved lightened ratemaking regulation for RED and its proposed financing and made findings on incidental regulation at the Park, certification of utility service there, and submetering of tenants, 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.

(13-M-0028SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Deny, Grant or Modify, in Whole or in Part, Central Hudson's Rehearing Request

I.D. No. PSC-25-13-00008-P

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

Proposed Action: The PSC is considering a petition filed by Central Hudson Gas & Electric Corporation seeking rehearing of an Order concerning the deferral of incremental electric storm restoration expenses related to Tropical Storm Irene on August 27-28, 2011.

Statutory authority: Public Service Law, sections 22 and 66

Subject: To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.

Purpose: To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (Central Hudson or Company) has requested rehearing of a Commission Order concerning the deferral for future rate recovery, with carrying charges, of incremental electric storm restoration expense related to Tropical Storm Irene on August 27-28, 2011. The Commission may adopt, reject or modify, in whole or in part, Central Hudson's rehearing request, and may also consider any related matters. The Commission may apply its decision here to other utilities.

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

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

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

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

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

(11-E-0651SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Provision by Utilities of Natural Gas Main and Service Lines

I.D. No. PSC-25-13-00009-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 a proposal by Staff of the Department of Public Service regarding clarification of regulation 16 NYCRR section 230.2.

Statutory authority: Public Service Law, sections 5(1), (2), 30 and 31

Subject: Provision by utilities of natural gas main and service lines.

Purpose: To help ensure efficient and economic expansion of the natural gas system as appropriate.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by the New York State Department of Public Service Staff (Staff) to clarify 16 NYCRR 230.2. If adopted, Staff's proposal would require the natural gas utilities to file tariff amendments that would clarify that (i) 100 feet of main is the minimum entitlement for each new natural gas customer and § 230 has language that allows the LDC to provide more footage at no cost to each customer if it is cost-justified and (ii) if two or more applicants are located beyond 100 feet from an existing main but the applicants are less than 100 feet from each other, (e.g. Applicant A is 150 feet from an existing main and Applicant B is 200 feet from an existing main but only 50 feet from Applicant B), 16 NYCRR 230.2 requires the utility to provide main extensions to each applicant that requests service concurrently at no cost to the applicants to the extent that the total required main extension is not greater than the total number of customers multiplied by 100 feet. In addition, Staff is requesting that parties respond to a series of questions on this subject.

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

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

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

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

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

(12-G-0297SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inergy's Participation in Debt Obligations of No More Than \$3.0 Billion on a Consolidated Basis

I.D. No. PSC-25-13-00010-P

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

Proposed Action: The Commission is considering a petition filed by Inergy East Pipeline LLC (Inergy) requesting the approval, under lightened regulation, of its participation in debt obligations of no more than \$3.0 billion on a consolidated basis with affiliates.

Statutory authority: Public Service Law, sections 5(1)(b) and 69

Subject: Inergy's participation in debt obligations of no more than \$3.0 billion on a consolidated basis.

Purpose: Consideration of Inergy's participation in debt obligations of no more than \$3.0 billion on a consolidated basis.

Substance of proposed rule: The Public Service Commission is considering a petition filed on May 15, 2013 by Inergy East Pipeline LLC (Inergy) requesting the approval, under lightened regulation, of its participation in debt offerings and borrowings in the amount of no more than \$3.0 billion

on a consolidated basis with affiliated and parent entities. The debt will be supported by a lien on Inergy's 37 mile gas pipeline running from the interstate gas pipeline owned by Dominion Transmission, Inc. to the city gate at Binghamton, N.Y. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(13-G-0210SP1)

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

Waiver of Certain Commission Requirements Related to Provision of Customer Information to Credit Reporting Agencies

I.D. No. PSC-25-13-00011-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 Verizon New York Inc.'s request for clarification or waiver of the Commission's rules related to the provision of customer information to credit reporting agencies.

Statutory authority: Public Service Law, section 91

Subject: Waiver of certain Commission requirements related to provision of customer information to credit reporting agencies.

Purpose: To waive a utility's right to provide information to credit reporting agencies related to customers' payment histories.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a request by Verizon New York Inc. to clarify or waive any Commission requirement related to the provision of customer information to credit reporting agencies (16 NYCRR § 609.3(a)(3)). The Commission may, in its discretion, extend such waiver to other telephone corporations in New York.

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

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

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

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

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

(13-C-0154SP1)

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

To Deny, Grant or Modify, in Whole or in Part, Central Hudson's Rehearing Request

I.D. No. PSC-25-13-00012-P

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

Proposed Action: The PSC is considering a petition filed by Central Hudson Gas & Electric Corporation seeking rehearing of an Order concerning the deferral of incremental electric storm restoration expenses related to October Nor'easter snow storm on October 29, 2011.

Statutory authority: Public Service Law, sections 22 and 66

Subject: To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.

Purpose: To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (Central Hudson or Company) has requested rehearing of a Commission Order concerning the deferral for future rate recovery, with carrying charges, of incremental electric storm restoration expense related to October Nor'easter snow storm on October 29, 2011. The Commission may adopt, reject or modify, in whole or in part, Central Hudson's request, and may also consider any related matters. The Commission may apply its decision here to other utilities.

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

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

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

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

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

(12-M-0204SP2)

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

Partial Payments, Directory Distribution, Suspension or Termination of Service, Service Quality Reporting Requirements

I.D. No. PSC-25-13-00013-P

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

Proposed Action: The Commission is considering a petition of Time Warner Cable Information Systems (New York), LLC for waivers of certain Commission regulations under 16 NYCRR.

Statutory authority: Public Service Law, sections 91(1), 94(2), 98

Subject: Partial payments, directory distribution, suspension or termination of service, service quality reporting requirements.

Purpose: To waive certain sections of 16 NYCRR sections 602, 603, 606, 609.

Substance of proposed rule: The PSC is considering whether to approve, in whole or in part, a petition by the Time Warner Cable Information Systems (NY) LLC the waiver of certain sections of 16 NYCRR:

16 NYCRR 602.10(b): to waive the Commission's rules requiring it to distribute telephone directories.

19 NYCRR section 609(4)(d): to waive the Commission's rules pertaining to the company's ability to suspend to terminate service to residential customers for nonpayment of bills between certain weekday or Saturday hours.

NYCRR Section 606.5: to modify billing categories and the application of partial payments.

NYCRR Sections 603.3 and 603.4: for the revision of Service Quality Improvement Plan reporting requirements.

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

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

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

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

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

(13-C-0193SP1)

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

Determination that NiGen is not Subject to Lightened Regulation and is an Exempt Alternate Energy Production Facility

I.D. No. PSC-25-13-00014-P

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

Proposed Action: The Commission is considering a petition filed by Niagara Generation LLC (NiGen) requesting that it be determined it is not subject to lightened regulation and is within the exemption from regulation for an alternate energy production facility.

Statutory authority: Public Service Law, sections 2(2-b), (2-d), (3), (4), (13), 5(1)(b), 64, 65, 66, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Determination that NiGen is not subject to lightened regulation and is an exempt alternate energy production facility.

Purpose: Consideration of if NiGen is subject to lightened regulation or is an exempt alternate energy production facility.

Substance of proposed rule: The Public Service Commission is considering a petition filed on May 30, 2013 by Niagara Generation LLC (NiGen) requesting that it be determined it is not subject to lightened regulation and is within the exemption from regulation for an alternate energy production facility. Niagara states that it was granted lightened regulation of its approximately 51 MW generation facility located in Niagara Falls, New York, fueled with biomass and solid waste supplemented by coal that constitutes no more than 25% of BTU fuel input annually, by Order dated January 22, 2007 in Case 06-E-1301, but that it is instead entitled to the exemption from regulation for an alternate energy production facility. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(13-E-0233SP1)

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

Determination that Erie is not Subject to Lightened Regulation and is Within the Exemption for Small Hydro Facilities

I.D. No. PSC-25-13-00015-P

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

Proposed Action: The Commission is considering a petition filed by Erie Boulevard Hydro Power, L.P. (Erie) requesting that it be determined it is not subject to lightened regulation and is within the exemption from regulation for small hydro facilities.

Statutory authority: Public Service Law, sections 2(2-c), (2-d), (3), (4),

(13), 5(1)(b), 64, 65, 66, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Determination that Erie is not subject to lightened regulation and is within the exemption for small hydro facilities.

Purpose: Consideration of if Erie is subject to lightened regulation or is within the exemption for small hydro facilities.

Substance of proposed rule: The Public Service Commission is considering a petition filed on May 30, 2013 by Erie Boulevard Hydro Power, L.P. (Erie) requesting that it be determined it is not subject to lightened regulation and is within the exemption from regulation for small hydro facilities. Erie states that it was granted lightened regulation of 75 hydro facilities it owns in upstate New York by Order dated June 28, 1999 in Case 99-E-0679, but that it is instead entitled to the exemption from regulation for small hydro facilities. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(13-E-0234SP1)

Department of State

NOTICE OF ADOPTION

Real Estate Advertising

I.D. No. DOS-43-12-00001-A

Filing No. 602

Filing Date: 2013-06-04

Effective Date: 2014-01-02

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

Action taken: Amendment of section 175.25 of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-k(1)

Subject: Real estate advertising.

Purpose: To provide guidance and protection pertaining to advertising by real estate licensees.

Text of final rule: Existing 19 NYCRR Section 175.25, Advertising is repealed.

A new Section 175.25, Advertising is added as follows:

175.25 Advertising

(a) Definitions

1. "Advertising" and "advertisement" mean promotion and solicitation related to licensed real estate activity, including but not limited to, advertising via mail telephone, websites, e-mail, electronic bulletin boards, business cards, signs, billboards, and flyers. "Advertising" and "advertisement" shall not include commentary made by a duly licensed real estate salesperson, real estate associate broker or real estate broker that is not related to promoting licensed real estate activity.

2. "Team" means two or more persons, one of whom must be an associate real estate broker or real estate salesperson, associated with the same real estate brokerage who hold themselves out or operate as a team.

3. "Real estate brokerage" means a real estate company represented by a real estate broker.

4. "Logo" means a graphic mark used to identify a real estate broker, associate broker, salesperson or team, but not a photograph of a real estate broker, associate broker, salesperson or team contained in an advertisement.

5. "Property" means real property or shares of stock in a cooperative corporation.

(b) Placement of advertisements

1. Only a real estate broker is permitted to place or cause to be published advertisements related to the sale or lease of property. Advertisements placed or caused to be published by an associate real estate broker, a real estate salesperson or a team for the sale or lease of property listed with or represented by a real estate broker are not permitted except where the property is listed with or represented by the real estate broker with whom the associate real estate broker, real estate salesperson or team placing the ad is associated and said real estate broker approved placement of the advertisement.

2. Authorization

a. No property shall be advertised unless the real estate broker has obtained authorization for such advertisement from the owner of the property or as hereinafter provided.

b. Real estate brokers shall not advertise property that is subject to an exclusive listing held by another real estate broker without the permission of the listing broker.

c. Proprietary information. Photographs of property that are posted on a real estate broker's website shall not be used or reproduced without written permission from the copyright holder of such photographs.

(c) Content of advertisements

1. Name of real estate broker. Advertisements shall indicate that the advertiser is a real estate broker or provide the name of the real estate broker or real estate brokerage and either: (i) the full address of the real estate broker or real estate brokerage or, (ii) the telephone number of the real estate broker or brokerage.

2. Name of associated licensees. The advertisement may include the names of one or more associate real estate brokers or real estate salespersons associated with the real estate broker or brokerage placing the advertisement. Where an advertisement includes the name of an associate broker, real estate salesperson or a team, the name of the real estate broker and/or real estate brokerage must also be printed in the advertisement.

3. Nicknames. Real estate brokers, associate real estate brokers, and real estate salespersons shall advertise using the name under which said real estate broker, associate real estate broker or real estate salesperson is licensed with the Department of State. A nickname may be used in an advertisement provided that the full-licensed name is listed clearly and conspicuously.

4. License type. Except as provided in subsection (d) of this section, advertisements shall correctly and accurately state the type of license held by the real estate broker, associate real estate broker or real estate salesperson named in the advertisement. Licensees may abbreviate the type of license held, provided that such abbreviation is not misleading. The use of the titles, "sales associate", "licensed sales agent" or simply "broker" is prohibited. Real estate brokers, associate real estate brokers or real estate salespersons who have additional titles or designations are permitted to advertise such titles or designations.

5. Contact information. An associate real estate broker, real estate salesperson or team may provide additional contact information, such as a post office box, in an advertisement.

6. Home offices. A residence may be used as an office provided that it is properly licensed by the Department of State.

7. Telephone numbers. Notwithstanding subdivision (c)(1) of this section, a real estate broker, associate broker, real estate salesperson or team may provide telephone numbers other than that of the brokerage in an advertisement, provided that the advertisement clearly identifies the type of such other telephone number as desk, home, cell phone, or otherwise.

8. Logos. A real estate team, associate real estate broker or real estate salesperson may use a logo different from that of the real estate broker or real estate brokerage with whom they are associated, provided that the name or logo of the real estate broker or real estate brokerage is also printed in the advertisement.

9. Property description. Advertisements shall include an honest and accurate description of the property to be sold or leased. All advertisements that state the advertised property is in the vicinity of a geographical area or territorial subdivision shall include as part of such advertisement the name of the geographical area or territorial subdivision in which such property is actually located. Use by real estate brokers, associate real estate brokers and real estate salespersons of a name to describe an area that would be misleading to the public is prohibited.

10. Guaranteed Profits. Advertisements shall not guarantee future profits from any real estate activity.

(d) Additional requirements and exceptions

1. Classified Advertisements. Classified and multi-property advertisements shall indicate that the advertiser is a real estate broker or brokerage; or provide the name of the real estate broker or real estate brokerage.

Classified and multi-property advertisements may omit the license type of any associate real estate broker or real estate salesperson named in the advertisement.

2. Business Cards. Notwithstanding subdivision (c) of this section, business cards must contain the business address of the licensee and the name of the real estate broker or real estate brokerage with whom the associate real estate broker or real estate salesperson is associated. All business cards must also contain the office telephone number for the associate real estate broker, real estate salesperson or team.

3. Web-based advertising

a. Websites created and maintained by associate real estate brokers, real estate salespersons and teams are permitted, provided that said associate real estate brokers, real estate salespersons and teams are duly authorized by their supervising real estate broker to create and maintain such websites and such websites remain subject to the supervision of the real estate broker with whom the licensees are associated while the website is live.

b. Every page of such a website shall include the information required by these rules and regulations. In addition, a link to the broker or brokerage website with whom the associate broker, salesperson or team is associated is required on the homepage of the associate broker, salesperson or team website unless the broker or brokerage does not have a website.

4. E-mail. An initial e-mail from a real estate broker, associate real estate broker, real estate salesperson or team to a client or potential client shall provide the information required by these rules and regulations. Such information may be omitted from subsequent e-mail communications to the same recipient.

5. For-Sale Signs. Notwithstanding subdivision (c)(1) of this section, unless otherwise prohibited by local law, any property listed through a real estate broker must be advertised as such, and any signage placed upon such property soliciting the sale or lease of the property must identify the representative broker or brokerage.

6. Advertisements referencing property not listed with broker. Any advertisement that references or includes information about a property that is not listed with the advertising broker or was not sold by the advertising broker shall prominently display the following disclaimer: "This advertisement does not suggest that the broker has a listing in this property or properties or that any property is currently available." Such advertisement: (i) shall not suggest, directly or indirectly, that the advertising broker was involved in the transaction and (ii) shall not refer to property currently listed with another broker absent consent provided pursuant to subdivision (b)(2)(b).

(e) Teams

1. Team name. Team names shall either: (i) include the full licensed name of the real estate brokers, associate brokers or real estate salespersons who are part of said team, or (ii) if the names are not included, the team name must be immediately followed by "at/of [full name of the broker/brokerage]." Team names shall use the term "team." The use of any other terms besides "team," such as "associate," "realty" or "group" is prohibited. The use of the name of a non-licensed individual in a team name is prohibited. For twelve months after the adoption of this regulation, teams that have changed their name to comply with this provision shall be entitled to state in advertisements under their new name that they were 'formerly known as' their prior team name.

2. Unlicensed team members. If any unlicensed individuals are named in advertising for a team, the advertisement must clearly and conspicuously state which individuals are real estate licensees and which ones are not.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 175.25(b)(2)(b), (c)(1), (d)(1), (3)(a), (b), (5), (6) and (e)(1).

Text of rule and any required statements and analyses may be obtained from: Whitney Clark, NYS Department of State, Office of Counsel, 1 Commerce Plaza, 99 Washington Avenue, Albany NY 12231, (518) 473-2728, email: whitney.clark@dos.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

Real Property Law (RPL) Article 12-A prescribes requirements for individuals and business entities to act as a real estate salesperson and/or real estate broker (hereinafter referred to collectively as "real estate licensees"). RPL § 441-c(1)(a), among other provisions, permits the Department of State to impose sanctions against real estate licensees for dishonest or misleading advertising.

RPL § 442-k(1) authorizes the New York State Board of Real Estate to promulgate regulations to administer and effectuate the purposes of Article 12-A of the Real Property Law ("Article 12-A"). To fulfill this purpose, the Department of State, in conjunction with the New York State Board of Real Estate, has issued rules and regulations which are found at Part 175 of Title 19 NYCRR and is proposing this rule.

2. Legislative Objectives:

Article 12-A, requires the Department of State to license and regulate real estate licensees. One of the purposes of Article 12-A is to ensure that real estate licensees deal honestly and fairly with members of the public. This proposed rule advances this legislative intent by providing guidance to real estate licensees on proper advertising practices so as to ensure that said advertisements are not false or misleading.

3. Needs and Benefits:

The proposed rule making will protect consumers, provide guidance to real estate licensees and meet the legislative intent of Article 12-A.

The Department of State investigates and prosecutes alleged violations of Article 12-A by real estate licensees, including those involving misleading and false advertising. Agency hearing determinations provide guidance on what constitutes “dishonest and misleading advertising.” Many years ago, the Department of State prepared and circulated informal advertising guidelines that incorporated many of the principals found in these agency hearing determinations. With the passage of time and changes in technology, these guidelines have become dated and no longer accurately reflect current advertising trends.

As a service to real estate licensees, Department of State staff routinely speak at meetings of local boards and trade associations and provide informal opinions to real estate licensees by telephone and letter. Up to 50% of the questions asked of Department of State staff by real estate licensees pertain to issues of advertising. The number of questions received by the Department on this issue and the number of real estate advertising issues encountered in administrative hearings, make it evident that the industry is in need of guidance on proper advertising practices, particularly with regard to internet advertising and marketing by “real estate teams.”

A real estate team is a group of real estate licensees working for a single real estate broker. Real Property Law section 441(1)(d) requires a real estate broker to supervise real estate licensees associated with him or her. Increasingly, real estate teams are placing misleading advertisements that make it appear as though they are a separate real estate company and not under the guidance and supervision of their representative broker.

With new technology and the evolving forms of advertising by real estate licensees, concerns have arisen over contemporary advertising related issues. In October 2006, the Council of the City of New York released a study into deceptive advertising practices by real estate licensees and recommended that the NYC Department of Consumer Affairs take immediate action to monitor the online advertising practices of New York City real estate licensees.

The proposed rule incorporates agency hearing determinations and provides a framework for real estate licensees on how to advertise in a way that complies with Article 12-A. This will benefit consumers by ensuring that they are not misled by false and/or misleading advertisements. It will also benefit real estate licensees by providing them with guidance on how to advertise in a manner that is compliant with statutory limitations.

4. Costs:

a. Costs to regulated parties:

The proposed rule making will not impose costs on those real estate licensees who choose to place advertisements unless the text of any existing advertisement has to be changed to comply with the proposed regulations. Advertising costs vary based on method and location.

Print advertising rates range from approximately \$8.00 to \$289 for a column inch of black and white advertising space. The cost of advertising in the classified section of a newspaper varies based on the frequency of the advertisement and whether the advertisement is placed in the daily or Sunday newspaper. These advertising rates range from approximately \$9.00 to \$21.00. The estimated cost of a radio ad is \$50 for a 30 second radio spot. Internet advertising rates vary from free to \$500 per month based on the website, size and type of the advertisement placed. Other websites charge a fee based on the number of real estate advertisements placed. Craigslist.org, a website that is commonly used by real estate licensees, charges a fee of \$10 per real estate ad in New York City and allows free posting on backpage.com. Billboard advertising rates vary from approximately \$400 to \$12,750 per month.

b. Costs to the Department of State:

The rule does not impose any costs to the Department of State. Rather, the proposed rule making will likely decrease the enforcement-related costs incurred by the agency. Many of the advertising-related complaints which the Department of State receives are the result of inadvertent, unintentional errors by real estate licensees. The proposed rule making will provide guidance to the industry and reduce the number of advertising-based complaints. This will save costs associated with the staff time needed to investigate and pursue these complaints.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule does not impose any new paperwork requirements insofar as advertisements are not among those records which real estate licensees are required to retain for a period of three years. (See 19 NYCRR section 175.23).

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

Initially, the Department of State considered merely updating the informal advertising guidelines. After consulting with the New York State Board of Real Estate, however, it was determined that enforceable regulations were required in order to adequately protect the public from dishonest and misleading advertising practices.

In preparing the proposed rule making, the Department of State reviewed advertising laws and regulations from other states. In addition, the Department of State worked closely with the two largest real estate trade associations (NYSAR and REBNY) in reviewing and drafting the proposed rule making. Various proposals were reviewed and considered, including the following.

It was proposed that membership in real estate teams be limited so as to require an associate broker to be a named member of any real estate team. After consideration, however, it was determined that this proposal could foster the false impression that a team is a separate real estate office and not under the guidance and supervision of the representative broker.

The Department of State also considered requiring real estate teams to immediately comply with all of the regulations upon adoption. In consultation with the New York State Real Estate Board and regulated parties, however, it was determined that some real estate licensees have developed a client base and business reputation under a particular team name that will be prohibited by the proposed regulations. To permit these licensees to acquaint the public with the new team name, it was decided that real estate teams may, for a one-year period following the adoption of the rule, continue to place advertisements indicating that they were ‘formerly known’ as the old team name.

Another alternative considered was to require certain content in all advertisements, such as the license category of the real estate licensee and the address of his or her broker. After consultation with the board and trade associations, however, it was determined that this content was not necessary in all advertisements and that for certain types, such as classified advertisements, an abbreviated form of advertising should be allowed so as to minimize advertising costs.

9. Federal Standards:

There are no federal standards regulating the registration of real estate licensees. Consequently, this rule does not exceed any existing federal standard.

10. Compliance Schedule:

To afford time to notify licensees of the new regulation and permit adequate time to bring existing advertisements into compliance, the Department of State intends the proposed rule making to be effective on January 2, 2014. Given the extensive outreach to the regulated public and efforts to include the two largest trade groups (NYSAR and REBNY) in the rule development, licensees will have had adequate notice of the proposed regulation. As such, the Department of State is not providing for a cure period prior to enforcement of these regulations.

Revised Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to real estate brokers and salespeople (“real estate licensees”) who are licensed pursuant to Article 12-A of the Real Property Law. The Department of State (the “Department”) currently licenses 108,896 real estate licensees, many of whom work for small businesses.

The rule does not apply to local governments.

2. Compliance requirements:

The proposed rule making does not impose any reporting or recordkeeping requirements on real estate licensees. All real estate licensees, however, will be required to comply with the proposed rule making in the event that it is adopted as regulation. Real estate licensees are not required to advertise their services. If they do so, however, the content of said advertisements will need to conform with the requirements and limitations of the proposed rule making.

3. Professional services:

Real estate licensees will not need to rely on professional services to comply with the requirements of the proposed rule, which merely limits and prescribes the content of advertisements. To place advertisements, however, real estate licensees will need to contact and work with the source of the advertisement, be it a newspaper, billboard, internet provider or other source, to arrange for the placement of the advertisement.

4. Compliance costs:

The proposed rule making may, but will not necessarily, impose costs on those real estate licensees who place advertisements that contain the in-

formation required by the proposed regulations. Advertising costs vary based on method and location.

Print advertising rates range from approximately \$8.00 to \$289 for a column inch of black and white advertising space. The cost of advertising in the classified section of a newspaper varies based on the frequency of the advertisement and whether the advertisement is placed in the daily or Sunday newspaper. These advertising rates range from approximately \$9.00 to \$21.00. The estimated cost of a radio ad is \$50 for a 30 second radio spot. Internet advertising rates vary from free to \$500 per month based on the website, size and type of the advertisement placed. Other websites charge based on the number of real estate advertisements. Craigslist.org, a website that is commonly used by real estate licensees, charges a fee of \$10 per real estate ad in New York City and allows free posting on backpage.com. Billboard advertising rates vary from approximately \$400 to \$12,750 per month.

5. Economic and technological feasibility:

The Department has determined that it will be economically and technologically feasible for small businesses to comply with the proposed rule. The limitations and requirements of the content of advertisements that would be imposed by the proposed rule making will not increase the costs of advertising. The costs of placing advertisements that are compliant with the proposed regulations are the same as placing advertisements that do not comply with the rule. As such, it will be economically feasible for small businesses to comply with the proposed rule.

It will also be technologically feasible for small businesses to comply with the proposed rule. The proposed rule making better defines 'false and dishonest advertising' by offering simple and easy to follow guidance on the content of advertisements. Real estate licensees, including those working for small businesses, will not have to rely on special technology to conform the content of their advertisements to the requirements of the proposed rule making.

6. Minimizing adverse economic impact:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any additional reporting or recordkeeping requirements on real estate licensees and does not require licensees to take any affirmative acts to comply with the rule other than conforming the content of any advertisements which they choose to place with the requirements of the proposed rule making.

While communicating with the regulated public about the proposed rule, the Department of State was informed that requiring real estate teams to change their names immediately upon adoption of the rule could negatively impact these teams. It was explained that real estate teams may have developed a business reputation under an old team name that will need to be changed so as to comply with the proposed rule making. So as to minimize any adverse economic impact on these licensees, the Department of State is allowing a one-year grace period, during which time real estate teams may indicate in their advertisements that they were 'formerly known as' the old team name.

7. Small business participation:

Prior to proposing the rule, the Department of State discussed the proposal at several public meetings of the New York State Board of Real Estate, the minutes of which were posted on the Department's website. The Department of State also worked closely with the two largest trade associations of real estate licensees (NYSAR and REBNY) in drafting the proposed rule making. These trade associations represent real estate licensees throughout the State, including those who work for small businesses. The Department of State will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to small businesses. Additional comments will be received and entertained by the Department.

8. Cure period:

The Department of State is not providing for a cure period prior to enforcement of these regulations. The proposed rule making will be effective on January 2, 2014. The Department of State deems a delayed effective date sufficient to provide notice to licensees that the rule has been adopted and adequate time to bring existing advertisements into compliance. Prior to proposing this rule, the Department conducted extensive outreach to regulated parties including involving the two largest trade groups (NYSAR and REBNY) in the rule development. As such, licensees will have adequate notice of the proposed regulation.

Revised Rural Area Flexibility Analysis

The Department of State has determined that the revisions made to the rule as proposed are not substantial and, as such, do not create a need to issue a Revised Rural Area Flexibility Analysis.

Revised Job Impact Statement

The Department of State has determined that the revisions made to the rule as proposed are not substantial and, as such, do not create a need to issue a Revised Job Impact Statement.

Initial Review of Rule

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

Assessment of Public Comment

The Department of State received numerous comments on the proposed rule. While all were considered, several were discussed at length with the NYS Board of Real Estate and certain non-substantial revisions were made.

The first comment considered was a concern that the proposed rule would make it difficult for commercial brokers to cooperate with each other in bringing transactions to completion due, in part, to a provision of the proposed rule that required written permission of the listing broker before another broker could advertise property subject to an exclusive listing agreement. The NYS Board of Real Estate determined that the intent of the regulation was to ensure that consent to advertise the listing of another is obtained and that this consent can be evidenced by writing or by other methods. To provide flexibility yet still fulfill the original intent of the proposed regulation, the word "written" was removed from 175(b)(2)(b).

Another comment correctly noted that the Department of State's current advertising regulations require that: "...all advertisements placed by a broker must indicate that the advertiser is a broker, or give the name of the broker and their phone number." (Emphasis added). As originally proposed, the rule changed this provision to require that, "advertisements shall indicate that the advertiser is a real estate broker and provide the name of the real estate broker..." (Emphasis added). Concern was expressed that such a small change could result in increased advertising costs to licensees. The text as proposed changed the wording or the original regulation inadvertently and, as such, the NYS Board of Real Estate revised 175.25(c)(1) to address the concern raised in this particular public comment.

A technical correction was made to section 175.25(d)(6) to address concern that the proposed regulation did not reflect the regulatory intent and would actually permit false and deceptive advertising under certain circumstances. The language was revised accordingly.

A similar technical correction was made to 175.25(e)(1), based on a public comment that the intent of the regulation was to require team names to only use the term "team" and that, as drafted, the proposed regulation permitted the use of other terms. The language was revised to accurately reflect the intent of the regulation.

Section 175.25(d)(1) of the rule addresses classified and multi-property advertisements. For these types of advertisements, the rule as proposed permitted licensees to omit the license type of the real estate licensee named in the advertisement. The intent of this particular regulation is to permit licensees to save advertising costs while still providing truthful and necessary information to the public. Concern was expressed that because this particular provision is subject to the general advertising requirements set forth in section 175.25(c)(1), advertising costs would still be unnecessarily high given the need to also print the broker's address or telephone number. The NYS Board of Real Estate revised the language to address this concern.

Concern was also expressed over the web-based advertising provisions found in sections 175.25(d)(3)(a) and (b) of the proposed regulation. It was argued that requiring subordinate licensees (teams, associate brokers and salespeople) to link to the broker's website from every page of a website created and maintained by a subordinate licensee was unduly burdensome. The NYS Board of Real Estate addressed this concern by requiring a link on only the home page of a subordinate licensee website while still requiring every page of said website to include the name and address of telephone number of the real estate broker or brokerage.

Finally, several comments were received about for-sale signs. (Section 175.25(d)(5)). As proposed, the rule required this signage to include the office telephone number of the brokerage. This would make a large number of signs obsolete and require their replacement at great expense to licensees. The NYS Board of Real Estate addressed this concern by removing the office telephone number requirement and revised the language to require that the signage include the name of the broker or brokerage.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-11-13-00006-A

Filing No. 593

Filing Date: 2013-05-30

Effective Date: 2013-05-30

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2013 through June 30, 2013.

Text or summary was published in the March 13, 2013 issue of the Register, I.D. No. TAF-11-13-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Thomas E. Curry, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

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.

Workers' Compensation Board

EMERGENCY RULE MAKING

Filing Written Reports of Independent Medical Examinations (IMEs)

I.D. No. WCB-25-13-00016-E

Filing No. 609

Filing Date: 2013-06-04

Effective Date: 2013-06-04

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

Action taken: Amendment of section 300.2(d)(11) of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117 and 137

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

Specific reasons underlying the finding of necessity: This amendment is adopted as an emergency measure because time is of the essence. Memorandum of Decisions issued by Panels of three members of the Workers' Compensation Board (Board) have interpreted the current regulation as requiring reports of independent medical examinations be received by the Board within ten calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the Board is not open on legal holidays, Saturdays and Sundays to receive the report, and the U.S. Postal Service is not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is not accepted into evidence and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the Board, the workers' compensation in-

surance carrier/self-insured employer, the claimant's treating provider, the claimant's representative and the claimant it is not possible to send the report by facsimile or electronic means. The Decisions have greatly, negatively impacted the professionals who conduct independent medical examinations and the entities that arrange and facilitate these exams, as well as the workers' compensation insurance carriers and self-insured employers. When untimely reports are not accepted into evidence, the insurance carriers and self-insured employers are prevented from adequately defending their position in a workers' compensation claim. Accordingly, emergency adoption of this rule is necessary.

Subject: Filing written reports of Independent Medical Examinations (IMEs).

Purpose: To amend the time for filing written reports of IMEs with the Board and furnished to all others.

Text of emergency rule: Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 1, 2013.

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

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to

some participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all requests for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the in-

surance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. Any independent medical exams conducted at their request must be filed by the physician, chiropractor, psychologist or podiatrist conducting the exam or by an independent medical examination (IME) entity. Workers' Compensation Law § 137 (1)(a) does not permit self-insured employers or insurance carriers to file these reports, therefore there is no direct action a self-insured local government must or can take with respect to this rule. However, self-insured local governments are concerned about the timely filing of an IME report as one filed late will not be admissible as evidence in a workers' compensation proceeding. This rule makes it easier for a report to be timely filed as it expands the timeframe from 10 calendar days to 10 business days. Small businesses that are self-insured will also be affected by this rule in the same manner as self-insured local governments.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

This rule requires the filing of IME reports within 10 business days rather than 10 calendar days. Prior to this rule medical providers authorized to conduct IMEs and IME entities hired to perform administrative functions for IME examiners, such as filing the report with the Board, had less time to file such reports. Self-insured local governments and small employers, who are not authorized or registered with the Chair to perform IMEs or related administrative services, are not required to take any action to comply with this rule. As noted above, WCL § 137(1)(a) does not permit self-insured employers or insurance carriers to file IME reports with the Board. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.