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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Movement of Elk and Deer

I.D. No. AAM-13-13-00002-P

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

Proposed Action: This is a consensus rule making to amend Part 68 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6), 72 and 74

Subject: Movement of elk and deer.

Purpose: To incorporate by reference the federal herd certification program for the interstate movement of elk and deer.

Text of proposed rule: Part 68.1 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new section 68.1 is added to read as follows:

68.1 Definitions. For the purposes of this Part:

(a) ''CWD susceptible cervid'' means any captive cervid of the genera Alces, Odocoileus or Cervus or any hybrid of such genera.

(b) ''CWD exposed cervid'' means a cervid that is, or has been part of a CWD positive herd within five years.

(c) ''CWD positive cervid'' means a cervid that has had a diagnosis of CWD confirmed by means of an official CWD test conducted by a laboratory certified by USDA/APHIS.

(d) ''CWD negative cervid'' means a cervid that has had an official CWD test conducted by a laboratory certified by USDA/APHIS that resulted in a ''not detected'' or negative classification.

(e) ''CWD suspect cervid'' means a cervid for which inconclusive laboratory evidence suggests a diagnosis of CWD.

(f) ''CWD infected zone'' means a defined geographic area, irrespective of state boundaries, in which CWD is present, whether in wild or captive cervids.

(g) ''Captive cervids'' means cervids that are privately or publicly maintained or held for economic or other purposes within a confined space by a perimeter fence, facility or other barrier. Wild white-tailed deer held in captivity under license or permit issued by the New York State Department of Environmental Conservation pursuant to Environmental Conservation Law section 11-0515 (licenses to collect, possess or sell for scientific or exhibition purposes) are not considered captive cervids for the purposes of this Part.

(h) ''Cervid'' means any member of the cervidae family.

(i) ''Chronic wasting disease'' (''CWD'') means a transmissible spongiform encephalopathy (TSE) of cervids.

(j) ''Commingling'' means cervids that have direct contact with each other or have less than thirty (30) feet of physical separation or that share management equipment, pasture, or water sources. Cervids are considered to have commingled if they have had such contact within the last five years.

(k) ''Department'' means the New York State Department of Agriculture and Markets.

(l) ''Herd'' means one or more cervids that are under common ownership or supervision and are grouped on one or more parts of any single premises (lot, farm or ranch), and all cervids under common ownership or supervision on two or more premises which are geographically separated but on which cervids have been commingled or had direct or indirect contact with one another.

(m) ''CWD herd plan'' means a written herd management agreement developed by the herd owner, State and Federal veterinarians, and others, and that has been approved by the respective Federal, State and Tribal officials. A herd plan sets out the steps to be taken to eradicate CWD in a CWD positive, exposed, or suspect herd.

(n) ''CWD positive herd'' means a herd in which a CWD positive cervid resided at the time it was diagnosed and which has not been depopulated and released from quarantine.

(o) ''CWD suspect herd'' means a herd in which one or more CWD suspect cervids are present.

(p) ''Special purpose herd'' means a captive herd managed and maintained in such a manner that no live cervid is removed, or allowed to be removed, from the designated premises except for immediate slaughter at an approved CWD slaughter facility.

(q) ''CWD exposed herd'' means a herd in which an epidemiological link between the herd and another positive or exposed herd or animal is established to have occurred within the previous five years.

(r) ''Official identification'' means a unique form of individual animal identification approved by the Department. Cervids in a herd under the Herd Certification Plan must have at least one eartag as one to the two means of animal identification.

(s) ''CWD monitored herd'' means a program of surveillance, monitoring, testing and related actions designed to identify CWD infection in special purpose CWD susceptible cervid herds.

(t) ''Owner'' means an individual, partnership, company, corporation or other legal entity that has legal title to an animal or herd of animals.

(u) ''Premises'' means the ground, area, buildings, water sources and equipment commonly shared by a herd of animals.

(v) ''CWD premises plan'' means the section of a herd plan which outlines the actions to be taken with regard to possible environmental contamination due to a CWD positive or exposed herd.

(w) ''Quarantine'' means an order issued by a State or Federal official prohibiting the movement of animals to and from a designated premises.

(x) ''State animal health official'' means the official of a state or country responsible for livestock and poultry disease control and eradication programs.

(y) ''Official test'' means a CWD test approved by USDA/APHIS which is performed at a USDA approved laboratory.

(z) ''USDA/APHIS'' means the United States Department of Agriculture Animal and Plant Health Inspection Service.

(aa) "Certificate of Veterinary Inspection (CVI)" means a document which:

(1) is issued by a veterinarian accredited by USDA/APHIS or a similar agency in the country of origin and is approved and counter-signed by the chief livestock health official of the state or country of origin.

(2) The CVI shall include:

(i) A movement permit number issued by the Department;

(ii) the full name and address including a federal premises number of both the consignor and consignee, the destination of each animal, the date of veterinary inspection, and the anticipated date of entry into New York;

(iii) the Chronic Wasting Disease and Tuberculosis status of each herd that the animal(s) resided in;

(iv) the identification of each animal including the species, breed, age, sex, all eartags, tattoos, brands, radio frequency identifiers, and registration number, if any;

(v) all test results required for movement by all state and federal agencies;

(vi) a statement that the animal(s) have been inspected by the veterinarian issuing the CVI and the animals is(are) not showing signs of infectious, contagious, or communicable disease except as noted.

(3) The CVI is valid for movement up to and including the 30th day following the date of inspection.

(ab) "immediate slaughter" means slaughter within 10 days (240 hours) at a state or federally inspected facility which will retain and make available to USDA/APHIS or department personnel records of all identification from the animal(s) and samples as required by the USDA/APHIS or the department to test for Chronic Wasting Disease and Tuberculosis.

(ac) "Movement permit" means a document issued by the Department which shall identify the source and destination of the shipment, the number of animals involved and the required individual identification of each cervid in the shipment, and shall accompany the cervids imported or moved into or within the State.

Section 68.4 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new section 68.4 is added to read as follows:

68.4 CWD Certified Herd Program.

(a) For purposes of enforcement of article 5 of the Agriculture and Markets Law, and except where in conflict with the statutes of this State or with rules and regulations promulgated by the commissioner, the commissioner hereby adopts the current federal regulation in title 9 of the Code of Federal Regulations, part 55 as it appears in the Federal Register, volume 77, no. 114 (dated June 13, 2012; US Government Printing Office, Washington, D.C. 20402) at pages 35566 through 35569 entitled Chronic Wasting Disease Herd Certification Program.

(b) Copies of this regulation, as published in the Federal Register are available at http://www.gpo.gov/fdsys/pkg/FR-2012-06-13/pdf/2012-14186.pdf. Copies of this regulation are also maintained in a file at the Department of Agriculture and Markets, Division of Animal Industry, 10B Airline Drive, Albany, NY 12235, and are available for public inspection and copying during regular business hours.

Text of proposed rule and any required statements and analyses may be obtained from: David Smith DVM, Director, Director of Animal Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502

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

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

Consensus Rule Making Determination

The Department has considered the proposed rule making and has determined that the rule is a consensus rule within the meaning of State Administrative Procedure Act section 102(11) in that it incorporates by reference a federal rule and no person is likely to object to the rule as written since it is noncontroversial.

The proposed regulation would repeal the existing section 68.1 and add a new section 68.1 which adds a new definitions section reflecting definitions set forth in the Chronic Wasting Disease (CWD) Herd Certification Program. The proposed regulations would also repeal the existing section 68.4 and add a new 68.4 which incorporates by reference, the CWD Herd Certification Program, as set forth in 9 CFR 55.23. The CWD herd certification program is designed to control CWD in farmed or captive cervids. Under the program, owners of elk, deer and moose herds who choose to participate in the program would have to follow requirements for animal identification, testing, herd management and movement of animals to and from herds. Since the new federal requirements are virtually the same as the current 1 NYCRR 68.4, it was decided to proceed with this proposal which adopts the United States Department of Agriculture (USDA) regulation by reference rather than making changes to the current program. The only more stringent standard which the Department is seeking to retain is that at least one of the forms of identification is an ear tag (section 68.1(1)(ab)(2)(iv)). The current regulations use the term "visible" but the only identification used by the industry which is visible is an ear tag.

The USDA promulgated the interim final rule on CWD in June of 2012. This rule requires that states shipping deer interstate must comply with the provisions of the CWD Herd Certification Program, as set forth in 9 CFR 55.23. 9 CFR 81, which regulates interstate movement of deer, elk and moose, become effective on December 10, 2012. Although the federal regulation allows the USDA to maintain a program, the agency has not funded such a program and has already stated that there are no plans to have a program for herds that are in states which are not in compliance. As of December 10, 2012, New York may be granted provisional approval by the USDA if satisfactory progress is made in codifying the requirements of the federal rule so that it is enforceable by the state; hence the need for this regulation.

The new USDA certification program has almost all of the same requirements of the current New York program with several exceptions such as the minimum required testing age, which is changed from 16 months to 12 months; the age at which an animal needs to be identified in a certified herd, which is changed from the first herd inventory after January 1 following the animals birth to 12 months of age; and establishment of a more precise definition of animal identification. In addition, the genus of moose, Alces, is being added to the list of susceptible species. CWD was found in 2008 in native moose in Colorado and Wyoming. This change will bring the State into compliance with the definition of CWD susceptible species in the federal rule.

This proposed amendment will impact 145 deer and elk herds which are in the voluntary CWD Herd Certification Program. They are all small businesses or hobbyists. Additional cost to producers is only for those producers seeking to be in the CWD Herd Certification Program and will be minimal, consisting of identifying animals born in the herd within 12 months, a practice already adopted by most breeders, and testing natural and harvest deaths between 12 and 16 months. This is an unusual time for deaths in the herd and the state of New York is currently paying all of the costs for sampling and testing of samples for CWD.

If the proposed amendment is not adopted, white tailed deer and elk breeders in New York will no longer be able to market animals out of state. Each year, New York exports between 50 and 100 live deer and elk representing between $100,000 and $500,000 in sales.

Accordingly, since regulated parties would benefit by the rule and since most regulated parties are complying with the federal regulations which are being incorporated by reference, it is unlikely that anyone will object to this rule as written since it is noncontroversial.

Job Impact Statement

The Department considered the effect of this proposed rule on jobs in the State and has determined that the proposal would not have an adverse impact on jobs. In fact, the proposed rule may have a positive impact on jobs for elk and deer breeders. Adoption of the proposed amendment would allow white tailed deer and elk breeders to market their animals out of state. Each year, New York exports between 50 and 100 live deer and elk representing between $100,000 and $500,000 in sales. These sales might have a positive impact on employment within the State and in any case, would not have an adverse impact on jobs.

Office of Alcoholism and Substance Abuse Services

ERRATUM

A Notice of Revised Rule Making, I.D. No. ASA-22-12-00014-RP, pertaining to Limits on Administrative Expenses and Executive Compensation, published in the March 13, 2013 issue of the *State Register* contained the incorrect assessment of public comment. Following is the correct assessment of public comment:

Assessment of Public Comment: Assessment of Public Comments OASAS received in response to its revised rule to add 14 NYCRR Part 812 "Limits on Administrative Expenses and Executive Compensation".

A Notice of Revised Rule Making was published in the New York State Register on October 31, 2012. The Office of Alcoholism and Substance Abuse Services (OASAS) received four (4) sets of comments during the public comment period associated with the revised rulemaking from The Association of Fundraising Professionals ("AFP"), Coalition of

Behavioral Health Agencies ("BHA"), Lawyers Alliance ("LA"), and Charity Defense Council ("CDC").

The issues and concerns raised in these comments are set forth below, grouped according to the part of the revised rule they. Other participating state agencies received comments that applied to all agencies implementing Executive Order No. 38 and those comments and responses are incorporated by reference into these responses; however, only OASAS' response is provided regarding issues addressed to OASAS.

Applicability

Issue/Concern: The Internal Revenue Service (IRS) rules and the Executive Order No. 38 regulations are not necessarily compatible concerning the issue of executive compensation. For instance, an organization that provides executive compensation which is reasonable pursuant to IRS rules may suddenly be subjected to penalties under the regulations.

Response: OASAS and the Division of the Budget (DOB) are aware that there are differences between the IRS rules and the revised regulations. The goal of these regulations is to implement Executive Order No. 38. Regarding penalties, the penalty provisions would not be applied "suddenly" ; rather Section 812.8 provides for notification of non-compliance, the submission of additional or clarifying information, a corrective action period, and the opportunity to appeal.

Issue/Concern: The regulations should cover only State-authorized payments, and not other State funds. When State funds are awarded through a State agency contract, that State agency has multiple opportunities to review the contractor's use of the funds.

Response: The regulations cover those funds that are either State funds or State-authorized payments. The regulations would not adequately address the targeted problems of excessive administrative costs and inflated compensation and would create inequities if only State-authorized payments were covered.

Issue/Concern: Payments through municipal or county contracts should not be considered for purposes of determining whether a provider is covered. Funds awarded or granted by county or local governmental units should be excluded from the definitions of State-authorized payments and State funds. Such a provision intrudes on local contracting authority, burdens local governments and confuses service providers having to distinguish proportion of funds from county contracts originating with state funding.

Response: The regulations cover those funds that are awarded through a county or local government contract and are either State funds or State-authorized funds. The regulations would not adequately address the targeted problems of excessive administrative costs and inflated compensation if only providers that contracted directly with State agencies were covered. This would create inequities among providers depending upon whether their funding was received directly or indirectly from the State.

Issue/Concern: It is discriminatory that not-for-profit human service providers are subject to these regulations, but for profit corporations are not.

Response: For profit organizations that meet the definition of "covered provider" pursuant to Section 812.3(d) may be subject to these regulations.

Issue/Concern: It is wrong that the regulations do not apply to State agencies that pay their employees large salaries.

Response: The regulations have been developed to implement Executive Order No. 38, which addresses contracts to render program services. Executive Order No. 38 does not address the salaries of particular State employees.

Definitions

Issue/Concern: The definition of "covered provider" at 812.3(d)(1)(ii) should be based on total revenues, and not in-State revenues. The explanation of "in-State revenues" does not resolve the inherent complications that arise from the receipt of contributed revenue from outside New York State or the question as to "philanthropic" support for providers with multi-state operations; suggest based on total support.

Response: The regulations focus on New York State with the goal of identifying contractors providing program services in New York State who receive a significant portion of their funds to provide such services from State funds or State-authorized payments.

Issue/Concern: The definition of "executive compensation" at 812.3(e) should be revised to clarify that the qualifying phrase "reportable on a covered executive's W-2 form" is applicable not only to the personal use of the organization's property, but also to other non-salary benefits.

Response: This technical revision will be made to § 812.3.

Issue/Concern: The definition of "program services expenses" at 812.3 should allow property rental, mortgage and maintenance expenses to be allocated between "program services" and "administrative expenses" based on the actual use of the property.

Response: With the noted exception of providing housing to members of the public receiving program services, OASAS maintains that for purposes of Executive Order No. 38, property rental, mortgage and maintenance expenses are not "program services expenses."

Limits on administrative expenses

Issue/Concern: The regulations at 812.4 and 812.5 applying Executive Order No. 38 restrictions to subcontractors and agents of covered providers should be amended to remove "or administrative" from the following language: "…if and to the extent that such a subcontractor or agent has received State funds or State-authorized payments from the covered provider to provide program or administrative services during the reporting period and would otherwise meet the definition of a covered provider but for the fact that it has receive State funds or State-authorized payments from the covered provider rather than directly from a governmental agency." This language makes it unclear whether a subcontractor or agent providing purely administrative services would be subject to the limitations.

Response: The language "or administrative" does not need to be removed. As stated in the quote above, to be subject to the regulatory limitations, a subcontractor or agent would need to meet the definition of a "covered provider." The definition of "covered provider" requires a contract or other agreement to render program services.

Issue/Concern: The revised regulations create complicated new definitions and reporting requirements. Implementing the revised regulations will add significantly to the providers' administrative costs.

Response: The participating State agencies will maintain on-line guidance to assist providers in complying with the new regulations. The participating State agencies are developing with DOB a stream-lined reporting system that will be operational prior to the effective date of the regulations to ensure that the burden of reporting the information required by these regulations will be minimal.

Issue/Concern: The required allocation of increased percentage to program services may restrict fundraising expenses as a percentage of administrative costs; not an accurate measure of an agency's effectiveness.

Response: The intent of this regulation is to maximize expenditures for program services; this could be an incentive to potential donors or repeat donors to increase donations if they know they will be going for treatment.

Issue/Concern: The limits on administrative expenses, set forth in 812.4, should require the Generally Accepted Accounting Principles (GAAP) permitted by the Form 990 as the allocation methodology for differentiating between administrative expenses and program expenses.

Response: The allocation methodology is flexible to allow for agency specific applications.

Issue/Concern: Concern that efficiencies of size may adversely affect corporate growth: smaller voluntary agencies may be hindered in growth because of complexities of administration and conflicts with federal 990.

Response: Executive Order No. 38 is encouraging the effective and efficient delivery of program services to New Yorkers by encouraging the redirection of funds from administrative expenses to service delivery. OASAS believes this is not necessarily the case; rather, dedicated donors will appreciate this and may be willing to increase contributions; the waiver option is always available.

Issue/Concern: Agencies should periodically re-evaluate the impact of the limitation on administrative expenses to ensure that organizations are not cutting back on key administrative functions in such a manner as to jeopardize their ability to deliver quality program services. Response: The participating State agencies together with DOB plan to monitor the impact of the regulations and make periodic updates as needed.

Limits on Executive Compensation

Issue/Concern: Providers may need to pay more than $199,000 per annum to find the quality leaders needed to facilitate the growth of their organizations.

Response: The regulations take this concern into consideration in § § 812.6 and 812.6 by permitting consideration of such factors such as the compensation provided to comparable executives; the qualifications and experience possessed by or required of the covered executive; the provider's efforts to secure other comparable executives; and/or the

nature, size and complexity of the covered provider's operations and program services.

Issue/Concern: The benefits "consistent with those paid to other employees" creates a conflict with Form 990 and will impose additional reporting and administrative burden on agencies needing to determine the 75% threshold.

Response: Limiting the extent of compensation paid by covered providers that rely to a significant degree upon public funds for their program and administrative services funding is the purpose of EO #38. These regulations provide a benchmark to ensure that State funds or State-authorized payments paid by this agency to providers are not used to support excessive compensation or unnecessary administrative costs. Providers and agencies may need to adjust budget items for federal and state reporting purposes, but once past the initial stages, this should not impose a substantial burden.

Issue/Concern: The 75th percentile will drive salaries down as the outliers reduce salaries in order to comply with the regulations. Eventually this will depress the maximum salary permitted under the regulations and lead to a loss of talent in NY.

Response: The participating State agencies periodically will assess the impact of the revised regulations on executive salaries and will propose any necessary adjustments to the regulations accordingly.

Issue/Concern: The revised regulations relating to executive compensation at § § 812.5 and 812.6 should be revised to allow for the delegation of the approval of executive compensation by a committee of the Board of Directors, such as a compensation committee.

Response: This has been addressed in the amended regulation.

Issue/Concern: The regulation at 812.5 should clarify by what mechanism compensation surveys will be "identified, provided or recognized." Also the participating State agencies need to approve their compensation surveys as soon as possible in order to allow providers sufficient time to review the surveys.

Response: The implementation process will address these issues. It is anticipated that a website will provide organizations guidance regarding acceptable compensation surveys and additional information regarding how compensation surveys will be identified, provided or recognized.

Issue/Concern: Instead of compensation surveys, a better approach would be to permit covered providers to develop and maintain a record of their own comparable salary information or, at a minimum, to explicitly allow the use of surveys based on information about compensation that has been reported for comparable positions at comparable organizations on the IRS Form 990.

Response: The revised regulations allow for new surveys to be developed. Consistent with the regulations at § 812.5, the new surveys would need to be identified, provided, or recognized by OASAS and the Director of DOB.

Issue/Concern: The definitions of "executive compensation" under Form 990 and the regulations vary. Because the regulations use a definition of executive compensation that includes only a portion of the benefits generally reported on Form 990, the comparability data necessary to assess compensation under the regulations may not be available.

Response: The participating State agencies currently are developing with DOB a list of acceptable compensation surveys.

Issue/Concern: The "grandfathering" provision for executive contracts prior to the effective date of the regulation is good but too short; concerns that it may still interfere with existing contractual obligations.

Response: This has period has been extended to exempt contracts entered into prior to July 1, 2012 unless the term of the contract extends beyond April 1, 2015. (812.5(h)).

Waivers

Issue/Concern: The effective date of the revised regulations creates problems because of the effective date. Providers should not be required to file waivers prior to April 1, 2013.

Response: The revised regulations will not require waivers to be filed prior to the effective date of July 1, 2013. The first reporting period for which a waiver, if necessary, is required to be filed is the first full reporting period commencing 90 calendar days after July 1, 2013.

Issue/Concern: The revised regulations at § 812.6 provide that a decision on a timely and complete waiver application shall be provided no later than 60 calendar days after submission of the application. This section should further state that such waiver applications shall be deemed to be granted in the event that a decision is not rendered within the 60 day deadline.

Response: The regulations will not be revised to make this requested change. The implementation process will address waiver issues further.

Issue/Concern: It is unrealistic to ask large organizations that have historically compensated their executives at levels which would necessitate a waiver to spend time and resources in an effort to hire qualified executives at lower rates and to document those efforts, in order to qualify for a waiver.

Response: The goal of Executive Order No. 38 is to ensure that taxpayer dollars are used to provide critical services to New Yorkers in need.

Penalties

Issue/Concern: After the proposed denial of a waiver, the revised regulation at § 812.6 provides, "Submission of a request for reconsideration within thirty (30) calendar days shall stay any action to deny an applicant's request for a waiver, pending a decision regarding such request for reconsideration, and shall stay any action to enter into a contract or other agreement." The meaning of this latter statement concerning a "stay" is unclear.

Response: OASAS submits that the plain meaning of the word "stay" in the context of this regulation is sufficiently clear.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Charter School Charter Renewals

I.D. No. EDU-13-13-00005-EP
Filing No. 254
Filing Date: 2013-03-12
Effective Date: 2013-03-12

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

Proposed Action: Addition of section 119.7 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2) and (20), 2851(4) and 2852(1), (2), (3), (5), (5-a), (5-b) and (6) and 2857(1)

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to clarify procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be presented for regular adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the June 17-18, 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the June meeting, would be July 3, 2013, the date a Notice of Adoption would be published in the State Register. However, it is anticipated that some charter renewal applications will need to be decided before July 3, 2013. Emergency action is therefore necessary for the preservation of the general welfare to immediately amend the Commissioner's Regulations to clarify procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and thereby ensure that decisions on pending charter renewals are timely made pursuant to the amended regulations.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption on a permanent basis at the June 17-18, 2013 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA.

Subject: Charter school charter renewals.

Purpose: To clarify standards for charter renewals of charter schools for which the Board of Regents is the authorizing entity.

Text of emergency/proposed rule: Pursuant to sections 101, 207, 305, 2851, 2852 and 2857 of the Education Law

Section 119.7 of the Regulations of the Commissioner of Education is added, effective March 12, 2013, as follows:

119.7 Renewal of Charters.

(a) Applicability. The provisions of this section shall apply to applications for the renewal of a charter pursuant to Education Law section 2851(4) that are submitted by charter schools for which the Board of Regents is the charter entity.

(b) Charter school obligations.

(1) The board of trustees of the charter school shall submit an application for charter renewal to the Board of Regents in a format and pursuant to a timeline prescribed by the Commissioner, consistent with Education Law section 2851(4).

(2) The board of trustees shall also submit such additional material or information as may be requested by the State Education Department.

(3) Where applicable, the charter school shall comply with the notification and submission requirements in subparagraph (d)(3) of this section.

(c) Department obligations.

(1) Notification of renewal application. Pursuant to Education Law section 2857(1), the State Education Department shall provide notification of receipt of an application for charter renewal and consider comments received concerning such application, consistent with Education Law section 2857(1).

(2) Renewal Site Visit and Report. The Department may, in its discretion, conduct or cause to be conducted a renewal site visit to the charter school for purposes of obtaining information relevant to the renewal of such school's charter and prepare a renewal site visit report, consistent with guidelines established by the Department.

(3) Renewal Recommendation.

(i) The Department shall prepare and submit to the Board of Regents a renewal recommendation which shall be based upon application of the performance benchmarks pursuant to subdivision (e) of this section. In making this renewal recommendation, the Department shall consider evidence and data gathered about the charter school, including, but not limited to, the following:

(a) information in the renewal application submitted pursuant to paragraph (b)(1) of this section;

(b) any additional material or information submitted by the charter School pursuant to paragraph (b)(2) of this section;

(c) any information relating to the site visit and the site visit report, if any, pursuant to paragraph (c)(2) of this section;

(d) the charter school's annual reporting results including, but not limited to, student academic achievement; and

(e) any other information that the Department, in its discretion, determines is relevant to whether the charter should be renewed, including, but not limited to, information related to whether renewal should be denied to protect the interests of students, families and the public including, but not limited to, instances involving criminal violations, fraud, unsafe environment, organizational stability or other serious or egregious violations of law or of the school's charter.

(ii) Notification of recommendation. The Department shall notify the charter school of the Department's renewal recommendation. In the event that the recommendation is to not renew the charter school's charter, the charter school shall be provided with written notification of such recommendation and the reasons for the recommendation, and shall be given an opportunity to submit, within thirty days of its receipt of such written notification, a written response to such recommendation. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument.

(d) Board of Regents procedures.

(1) Board of Regents determination.

(i) The decision concerning whether to approve a charter renewal application shall be wholly within the discretion of the Board of Regents, and shall be based on whether the Board can make the relevant findings specified in Education Law section 2852(2) for the approval of such an application.

(ii) The Board of Regents shall consider the following when making a decision concerning whether to approve a charter renewal application:

(a) the information in the renewal application submitted pursuant to paragraph (b)(1) of this section;

(b) any additional material or information submitted by the charter school pursuant to subparagraph (b)(2) of this section;

(c) comments received pursuant to Education Law section 2857(1), as provided for in paragraph (c)(1) of this section;

(d) any information relating to the site visit and the site visit report, if any, pursuant to paragraph (c)(2) of this section;

(e) the charter school's annual reporting results including, but not limited to, student academic achievement;

(f) the Department's renewal recommendation pursuant to paragraph (c)(3) of this section and the charter school's written response, if any, pursuant to subparagraph (c)(3)(ii) of this section; and

(g) any other information that the Board, in its discretion, may deem relevant to its determination whether the charter should be renewed, including, but not limited to, information related to whether renewal should be denied to protect the interests of students, families and the public including, but not limited to, instances involving criminal violations, fraud, unsafe environment, organizational stability or other serious or egregious violations of law or of the school's charter.

(iii) In making its decision concerning whether to approve a charter renewal application, the Board of Regents shall consider the totality of the evidence presented in each case, and may accept or reject, in whole or in part, the Department's renewal recommendation, provided however that nothing in this subparagraph shall be construed as prohibiting the Board of Regents from weighing any one factor more heavily than another.

(iv) The decision of the Board of Regents with respect to whether to approve a renewal application shall be final.

(2) Renewal outcomes.

(i) The Board of Regents in its sole discretion may:

(a) renew a charter for a maximum term of five years;

(b) renew the charter for a term of less than five years; or

(c) deny renewal of the charter.

(ii) When deciding whether to grant a renewal application and/or for how long to renew a school's charter, the charter school's student academic achievement shall be considered of paramount importance by the Board of Regents. Furthermore, for all renewals subsequent to a first renewal, a charter school's student academic achievement shall be given greater weight than for a first renewal.

(3) In the event that the Department's renewal recommendation recommends that the Regents grant a renewal application, but the Board of Regents decides to reject such recommendation and deny renewal of a charter, the charter school shall be provided with written notification of such decision and the reasons for the decision, and shall be given an opportunity to submit a written response to such decision and request that the Board of Regents reconsider its action. If the charter school chooses to submit a written response, the charter school shall, within five days of receipt of the Department's notification, notify the Department in writing of its intent to submit a written response, and shall submit such written response within thirty days of receipt of the Department's notification. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument. The Department shall submit any such submission to the Board of Regents for reconsideration. Following receipt of such submission, the Board of Regents shall reconsider the charter school's renewal application, provided that nothing in this paragraph shall be construed to require more than one reconsideration.

(e) Performance benchmarks. Each renewal charter for a charter school authorized by the Board of Regents shall include the performance benchmarks set forth in the Charter School Performance Framework, as issued by the Department, as part of the oversight plan in the charter school's charter agreement. For each such renewal charter, the analysis of qualitative and quantitative data and evidence concerning a charter school's performance, for purposes of the Department's renewal recommendation pursuant to paragraph (c)(3) of this section, shall be based on the charter school's achievement in each of the performance benchmarks set forth in the Charter School Performance Framework; provided that the charter school's performance under student academic achievement, as set forth in Benchmark 1: Student Performance shall be paramount when determining to renew a school's charter.

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 June 9, 2013.

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

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

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Board of Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

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

Education Law section 305(1) provides that the Commissioner is the chief executive officer of the State system of education and of the Board of Regents, and charged with the enforcement of all general and special laws relating to the educational system of the State and the execution of all educational policies determined by Regents. Section 305(2) provides that the Commissioner shall have general supervision over all schools and institutions subject to the Education Law or any statute relating to education. Section 305(20) provides that the Commissioner shall have and execute such further powers and duties as he shall be charged with by the Regents.

Education Law section 2851(4), prescribes requirements for the renewal of charter school charters in accordance with the provisions of Article 56 of the Education Law pursuant to Education Law section 2852.

Education Law section 2857(1) provides that at each significant stage of the chartering process the charter entity and the Board of Regents shall provide appropriate notification to the school district in which the charter school is located and to public and nonpublic schools in the same geographic area as the charter school. Prior to the issuance, revision, or renewal of a charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the foregoing. Such hearing must be held in the community potentially impacted by the proposed charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold such hearing. In addition, the school district shall be given an opportunity to comment on the proposed charter to the charter entity.

LEGISLATIVE OBJECTIVES:

Consistent with the statutory authority set forth above, the proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity.

NEEDS AND BENEFITS:

In November 2012, the Board of Regents approved a Charter School Renewal Policy and endorsed a Performance Framework, which outlines the performance benchmarks by which charter schools will be evaluated by Department Staff when they apply for renewal. Taken together, these two documents were intended to provide a roadmap for the renewal process for charter schools authorized by the Regents and ensure that all interested and impacted parties are informed at the outset of the process of the benchmarks by which a renewal application will be judged and the policy underpinnings of charter renewal decisions. Consistent with the terms of the Department's $113 million federal Charter Schools Program (CSP) multi-year grant, improvement in student academic achievement is the most important factor that will be considered by the Regents when determining whether to renew or revoke a school's charter.

The proposed amendment applies to applications for the renewal of a charter pursuant to Education Law section 2851(4) that are submitted by charter schools for which the Board of Regents is the charter entity. The proposed amendment, which is consistent with the Performance Framework endorsed by the Regents, makes the charter school renewal process more transparent by adopting a comprehensive regulation that embodies the guidelines for the renewal process and policies. In addition to clarifying the Board's previous Charter School Renewal Policy, the proposed amendment requires that renewal charters include the performance benchmarks prescribed pursuant to the regulation. The end result is a roadmap for the renewal process for charter schools authorized by the Regents that clearly sets forth the roles, responsibilities and obligations of all the parties in the charter renewal process: the charter school's board of trustees, the Department, and the Board of Regents. The proposed amendment also outlines the possible charter renewal outcomes, and specifies that such outcomes are within the sole discretion of the Board of Regents.

COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Cost to private regulated parties: none.

(d) Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity and does not impose any additional costs on the State, local government, private regulated parties or the State Education Department, as regulating agency.

LOCAL GOVERNMENT MANDATES:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity and will not impose any additional program, service, duty or responsibility upon local governments.

PAPERWORK:

The board of trustees of a charter school shall submit an application for charter renewal to the Board of Regents in a format and pursuant to a timeline prescribed by the Commissioner, consistent with Education Law section 2851(4). The board of trustees shall also submit such additional material or information as may be requested by the State Education Department.

In the event that the Department's renewal recommendation recommends that the Regents grant a renewal application, but the Board of Regents decides to reject such recommendation and deny renewal of a charter, the charter school shall be provided with written notification of such decision and the reasons for the decision, and shall be given an opportunity to submit a written response to such decision and request that the Board of Regents reconsider its action. If the charter school chooses to submit a written response, the charter school shall, within five days of receipt of the Department's notification, notify the Department in writing of its intent to submit a written response, and shall submit such written response within thirty days of receipt of the Department's notification. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument.

DUPLICATION:

The proposed amendment does not duplicate any existing State or Federal requirements.

ALTERNATIVES:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable Federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and does not impose any economic impact, or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to all charter schools in the State for which the Board of Regents is the charter entity. There are currently 41 charter schools open for instruction in the 2012-13 school year for which the Board of Regents is the charter entity; an additional 14 such charter schools are scheduled to open in 2013-14 or later.

COMPLIANCE REQUIREMENTS:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and will not impose any additional reporting, recordkeeping or other compliance requirements on school districts or charter schools.

The board of trustees of a charter school shall submit an application for charter renewal to the Board of Regents in a format and pursuant to a timeline prescribed by the Commissioner, consistent with Education Law section 2851(4). The board of trustees shall also submit such additional material or information as may be requested by the State Education Department.

In the event that the Department's renewal recommendation recommends that the Regents grant a renewal application, but the Board of Regents decides to reject such recommendation and deny renewal of a charter, the charter school shall be provided with written notification of such decision and the reasons for the decision, and shall be given an opportunity to submit a written response to such decision and request that the Board of Regents reconsider its action. If the charter school chooses to submit a written response, the charter school shall, within five days of receipt of the Department's notification, notify the Department in writing of its intent to submit a written response, and shall submit such written response within thirty days of receipt of the Department's notification. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on school districts or charter schools.

COMPLIANCE COSTS:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter

entity and does not impose any additional costs on the State, local government, private regulated parties or the State Education Department, as regulating agency.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional compliance costs or technological requirements on school districts or charter schools.

MINIMIZING ADVERSE IMPACT:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and will not impose any additional reporting, recordkeeping or other compliance requirements, or costs, on school districts or charter schools.

LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to charter schools and to the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all charter schools in the State for which the Board of Regents is the charter entity. None of such charter schools are located in the 44 rural counties with less than 200,000 inhabitants or the 71 towns in urban counties with a population density of 150 per square mile or less.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and will not impose any additional reporting, recordkeeping or other compliance requirements on school districts or charter schools.

The board of trustees of a charter school shall submit an application for charter renewal to the Board of Regents in a format and pursuant to a timeline prescribed by the Commissioner, consistent with Education Law section 2851(4). The board of trustees shall also submit such additional material or information as may be requested by the State Education Department.

In the event that the Department's renewal recommendation recommends that the Regents grant a renewal application, but the Board of Regents decides to reject such recommendation and deny renewal of a charter, the charter school shall be provided with written notification of such decision and the reasons for the decision, and shall be given an opportunity to submit a written response to such decision and request that the Board of Regents reconsider its action. If the charter school chooses to submit a written response, the charter school shall, within five days of receipt of the Department's notification, notify the Department in writing of its intent to submit a written response, and shall submit such written response within thirty days of receipt of the Department's notification. Any such written response may include supporting affidavits, exhibits and other documentary evidence and may also include a written legal argument.

The proposed amendment does not impose any additional professional services requirements on school districts or charter schools in rural areas.

COSTS:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity and does not impose any additional costs on the State, local government, private regulated parties or the State Education Department, as regulating agency.

MINIMIZING ADVERSE IMPACT:

The proposed amendment clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity, and will not impose any additional reporting, recordkeeping or other compliance requirements, or costs, on school districts or charter schools.

RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee. In addition, copies of the proposed rule have been provided to each charter school for review and comment.

Job Impact Statement

The proposed rule clarifies procedures for the renewal of charters of charter schools for which the Board of Regents is the charter entity. The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Licensure of Non-degree Granting Private Proprietary Schools

I.D. No. EDU-45-12-00013-A
Filing No. 253
Filing Date: 2013-03-12
Effective Date: 2013-03-27

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

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

Statutory authority: Education Law, sections 207 (not subdivided), 212(3), 305(1), 5001-5010; and L. 2012, ch. 381

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

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

Text or summary was published in the November 7, 2012 issue of the Register, I.D. No. EDU-45-12-00013-P.

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

Revised rule making(s) were previously published in the State Register on January 23, 2013.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

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

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

1. COMMENT

One commenter expressed concern with the change to section 126.7 (b)(9) of the proposed amendment which requires an enrollment agreement to include a provision for the method or methods of payment including, as appropriate, the disbursement schedule for each type of financial assistance available which shall meet the requirements set forth in section 5002(1)(b-1) of the Education Law. The commenter noted that disclosure in an enrollment agreement is not necessary and is not compliant with Federal regulations. (Financial Aid is already a highly regulated area and these types of disclosures are given to students in other documents. Additionally, this would allow for a potential cross-over of the world of financial aid into the admissions department, which is strictly prohibited by Federal regulations.)

RESPONSE:

The proposed amendment has been amended to eliminate this requirement.

2. Comment:

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

RESPONSE:

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

3. COMMENT:

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

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

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

RESPONSE:

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

Department of Environmental Conservation

NOTICE OF ADOPTION

Sulfur-In-Fuel Standards

I.D. No. ENV-44-12-00015-A

Filing No. 248

Filing Date: 2013-03-06

Effective Date: 30 days after filing

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

Action taken: Amendment of Part 200 and Subpart 225-1 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0325, 71-2103 and 71-2105

Subject: Sulfur-in-fuel standards.

Purpose: Lower sulfur-in-fuel limits for distillate and residual oils, remove expired provisions and correct typographical errors.

Text of final rule: A new Subdivision 200.1(cw) is added as follows:

(cw) Waste Oil. Used and/or reprocessed engine lubricating oil and/or any other used oil, including but not limited to, fuel oil, engine oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residue, animal oil, and vegetable oil, which has not subsequently been re-refined.

(Existing sections 200.2 through 200.8 remain unchanged.)

Existing section 200.9, Table 1 is amended as follows:

Regulation	Referenced Material	Availability
225-1.5(b)	*40 CFR Part 60, Appendix B, July 1, 2006, Performance Specification 2, pages 639-646*	*
225-1.5(b)(3)	*40 CFR Part 75, July 1, 2008*	*
[225-1.7(b)]	[40 CFR Part 60, Appendix B(July 1989) Performance Specification 2, pages 981-988]	[*]

(Existing section 200.10 through section 200.16 remains unchanged.)

Existing 6 NYCRR Subpart 225-1, Fuel Composition and Use - Sulfur Limitations is repealed.

A new Subpart 225-1, Fuel Composition and Use - Sulfur Limitations is added as follows:

Section 225-1.1 Definitions.

(a) To the extent that they are not inconsistent with the specific definitions in Subdivision (b) of this Section, the general definitions of Part 200 and Part 201 of this Title apply.

(b) For the purpose of this Subpart, the following definitions also apply:

(1) Fuel distributor. Any person who transports, stores, or causes the transportation or storage of distillate oil, residual oil, and/or coal at any point between a refinery/mine or importer's facility and a retail outlet or wholesale purchaser-consumer's facility.

Section 225-1.2 Sulfur-in-fuel limitations. No person will sell, offer for sale, purchase, or fire any fuel which exceeds the sulfur-in-fuel limitations of this Section, except as provided in Sections 225-1.3 or 225-1.4 of this Subpart. For the purposes of this Subpart liquid bio-fuels, other than waste oils, will be required to meet the sulfur-in-fuel standards of either number two heating oil or distillate oil.

(a) Owners and/or operators of any stationary combustion installation(s) that fire(s) coal and has a total heat input greater than 250 million Btu per hour, where an application for a permit was received by the department after March 15, 1973, and the stationary combustion installation is not located in New York City or Nassau, Rockland or Westchester Counties, are limited to the firing of coal with 0.60 pound of sulfur per million Btu gross heat content or less. If two or more emission sources are connected to a common air cleaning device and/or emission point, the total heat input for such emission point is the sum of the total heat input of all emission sources which are operated simultaneously and connected to the common air cleaning device and/or emission point; or

(b) Owners and/or operators of any stationary combustion installation that fires either solid fuels or oil are limited to the firing of solid fuels or oil with a sulfur content listed in the table below through June 30, 2014:

Area	*Liquid fuel (percent sulfur by weight)*		*Solid fuel (pounds of sulfur per million Btu gross heat content)*
	Residual	*Distillate**	
New York City	*0.30*	*0.20*	*0.2 MAX*
Nassau, Rockland and Westchester Counties	*0.37*	*0.37*	*0.2 MAX*
Suffolk County: Towns of Babylon, Brookhaven, Huntington, Islip, and Smith Town	*1.00*	*1.00*	*0.6 MAX*
*Erie County: City of Lackawana and South Buffalo***	*1.10*	*1.10*	*1.7 MAX and 1.4 AVG****
Niagara County and remainder of Erie County	*1.50*	*1.50*	*1.7 MAX and 1.4 AVG****
Remainder of State	*1.50*	*1.50*	*2.5 MAX, 1.9 AVG***, and 1.7 AVG (ANNUAL)*****

** Except for number two heating oil as stated in Subdivision (f) of this Section.*

*** South Buffalo is defined as the area in the City of Buffalo south of a line from the intersection of IR 190 and Route 5 and proceeding east along IR 190 to the city line.*

**** Averages are computed for each emission source by dividing the total sulfur content by the total gross heat content of all solid fuel received during any consecutive three-month period.*

***** Annual averages are computed for each emission source by dividing the total sulfur content by the total gross heat content of all solid fuel received during any consecutive 12-month period.*

(c) Owners and/or operators of any stationary combustion installation that fires solid fuels are limited to the firing of solid fuel with a sulfur content listed in the table below on or after July 1, 2014:

Area	*Solid fuel (pounds of sulfur per million Btu gross heat content)*
New York City	*0.2 MAX*
Nassau, Rockland and Westchester Counties	*0.2 MAX*
Suffolk County: Towns of Babylon, Brookhaven, Huntington, Islip, and Smith Town	*0.6 MAX*
Erie and Niagara Counties	*1.7 MAX, 1.4 AVG**
Remainder of State	*2.5 MAX, 1.9 AVG*, and 1.7 AVG (ANNUAL)***

** Averages are computed for each emission source by dividing the total sulfur content by the total gross heat content of all solid fuel received during any consecutive three-month period.*

*** Annual averages are computed for each emission source by dividing the total sulfur content by the total gross heat content of all solid fuel received during any consecutive 12-month period.*

(d) Owners and/or operators of any stationary combustion installation that fires residual oil are limited to the firing of residual oil with a sulfur content listed in the table below on or after July 1, 2014:

Area	*Residual Oil (percent sulfur by weight)*
New York City	*0.30*
Nassau, Rockland and Westchester Counties	*0.37*

(e) Owners and/or operators of any stationary combustion installation that fires residual oil are limited to the purchase of residual oil with a sulfur content listed in the table below on or after July 1, 2014, and are limited to the firing of residual oil with a sulfur content listed in the table below on or after July 1, 2016:

Area	Residual Oil (percent sulfur by weight)
Suffolk County: Towns of Babylon, Brookhaven, Huntington, Islip, and Smith Town	0.50
Erie and Niagara Counties	0.50
Remainder of State	0.50

(f) Owners and/or operators of commercial, industrial, or residential emission sources that fire number two heating oil on or after July 1, 2012 are limited to the purchase of number two heating oil with 0.0015 percent sulfur by weight or less.

(g) Owners and/or operators of a stationary combustion installation that fires distillate oil other than number two heating oil are limited to the purchase of distillate oil with 0.0015 percent sulfur by weight or less on or after July 1, 2014.

(h) Owners and/or operators of any stationary combustion installation that fires distillate oil including number two heating oil are limited to the firing of distillate oil with 0.0015 percent sulfur by weight or less on or after July 1, 2016.

(i) Owners and/or operators of any stationary combustion installation that fires waste oil on or after July 1, 2014 are limited to the firing of waste oil with 0.75 percent sulfur by weight or less.

Section 225-1.3 Exceptions contingent upon fuel shortage.

(a) Upon application by a facility owner or a fuel distributor the department may issue an order granting a temporary exception from the provisions of this Subpart where it can be shown, to the department's satisfaction, that there is an insufficient supply of conforming fuel, either:

(1) of the proper type required for firing in a particular emission source; or

(2) generally throughout an area of the State.

(b) The New York State Energy Research and Development Authority must certify that there exists an insufficient supply of fuel which conforms to the standards in this Subpart before a sulfur-in-fuel exception may be granted under this Subdivision.

(c) The department may grant a sulfur-in-fuel exception contingent upon a fuel shortage for a period not longer than 45 days.

(d) The department may grant a sulfur-in-fuel exception contingent upon a fuel shortage for a period longer than 45 days, but not longer than one year, only after a public hearing is held to gather information relevant to such an exception. The applicant for the exception must publish notice of such hearings, in a form acceptable to the department, in a newspaper of general circulation in the area for which the exception is sought. The applicant will bear the cost of publication of the notice, of the hearing transcript, and for rental of space in which the hearing is conducted.

(e) The department recognizes that, pursuant to section 117 of article 5 of the Energy Law, provisions of this Subpart may be pre-empted when the Governor declares that an energy or fuel supply emergency exists or is impending.

Section 225-1.4 Variances.

(a) Fuel mixtures or equivalent emission rate variances. Fuels with sulfur content greater than that allowed by this Subpart may be fired when the facility owner can demonstrate that sulfur dioxide emissions do not exceed the value for S calculated using the following equation: $S = (1.1AM + 2BT)/(M + T)$ where:

S = Allowable sulfur dioxide emission (in pounds per million Btu)

A = Sulfur in oil allowed by Section 225-1.2 of this Subpart (in percent by weight)

B = Average sulfur in solid fuel allowed by Section 225-1.2 of this Subpart (in pounds of sulfur per million Btu gross heat content)

M = Percent of total heat input from liquid fuel

T = Percent of total heat input from solid fuel (including coal, coke, wood, wood waste, and refuse-derived fuel)

Fuel mixtures and equivalent emission rate variances only apply to processes or stationary combustion installations. Compliance will be based on the total heat input from all fuels fired, including gaseous fuels. Any process or stationary combustion installation owner who chooses to fire a fuel mixture pursuant to this Subdivision is subject to the emission and fuel monitoring requirements of Section 225-1.5 of this Subpart.

(b) Experiments variance. Upon application, the department may issue a variance allowing the sale, offering for sale, purchase and firing of fuel having a sulfur content in excess of the limits imposed by this Subpart, where such fuel would be fired to demonstrate the performance of experimental equipment and/or process(es) for reducing sulfur compounds from an emission source.

(c) Coal and coke. In New York City and Nassau, Rockland and Westchester Counties, the commissioner will permit:

(1) the sale and the continued, but not increased, purchase and use of coal and coke for installations with a maximum operating heat input equal to or less than one million Btu per hour if coal and coke has been used continuously since December 31, 1967 and the maximum sulfur content does not exceed 0.6 pound per million Btu gross heat content; or

(2) the sale, purchase and use of coal and coke for approved conversions of existing stationary combustion installations to the use of coal, and for new coal-fired stationary combustion installations, provided that the coal conversion or new stationary combustion installations meet all applicable air quality and State Environmental Quality Review requirements.

Section 225-1.5 Emissions and fuel monitoring.

(a) The provisions of this section apply to owners of stationary combustion installations:

(1) with a total heat input greater than 250 million Btu per hour. If two or more emission sources are exhausted through a common emission point, the total heat input for such an emission point is either the sum of the maximum operating heat inputs of all emission sources which are operated simultaneously and exhausted through the common emission point, or the maximum operating heat input of any individual emission source operated independently and connected to the common emission point, whichever is greater;

(2) which are equipped with approved sulfur dioxide control equipment; or

(3) which are subject to a sulfur dioxide equivalent emissions rate for a fuel mixture pursuant to Subdivision 225-1.4(a) of this Subpart.

(b) Instruments for continuously monitoring and recording sulfur compound emissions (expressed as sulfur dioxide) must be installed and operated at all times that the stationary combustion installation is in service. Such instruments must be operated in accordance with manufacturer's instructions, must satisfy the criteria in "performance specification 2", appendix B, part 60 of title 40 of the Code of Federal Regulations (see Table 1, Section 200.9 of this Title), and must be acceptable to the department. Exceptions to these requirements are:

(1) stationary combustion installations where gaseous fuel is the only fuel fired; or

(2) stationary combustion installations, not including any equipped with sulfur dioxide control equipment, whose fuel is subjected to representative sampling and sulfur analysis conducted in a manner approved by the department; or

(3) stationary combustion installations required to use the continuous monitoring specifications under 40 CFR part 75 (see Table 1, Section 200.9 of this Title).

(c) Measurements must be made daily of the rate of each fuel fired. The gross heat content and ash content of each fuel fired must be determined at least once each week. In the case of stationary combustion installations producing electricity for sale, the average electrical output and the hourly generation rate must also be measured.

Section 225-1.6 Reports, sampling, and analysis.

(a) The department will require fuel analyses, information on the quantity of fuel received, fired or sold, and results of stack sampling, stack monitoring, and other procedures to ensure compliance with the provisions of this Subpart.

(b)(1) Any person who sells oil and/or coal must retain, for at least five years, records containing the following information:

(i) fuel analyses and data on the quantities of all oil and coal received; and

(ii) the names of all purchasers, fuel analyses, and data on the quantities of all oil and coal sold.

(2) Such fuel analyses must contain, as a minimum:

(i) data on the sulfur content, ash content, specific gravity, and heating value of residual oil;

(ii) data on the sulfur content, specific gravity, and heating value of distillate oil; and

(iii) data on the sulfur content, ash content, and heating value of coal.

(c) Sampling, compositing, and analysis of fuel samples must be done in accordance with methods acceptable to the department.

(d) Facility owners or fuel distributors required to maintain and retain records pursuant to this Subpart must make such records available for inspection by the department.

(e) Data collected pursuant to this Subpart must be tabulated and summarized in a form acceptable to the department, and must be retained for at least five years. The owner of a Title V facility must furnish to the department such records and summaries, on a semiannual calendar basis, within 30 days after the end of the semiannual period. All other facility owners or distributors must submit these records and summaries upon request of the department.

(f) Facility owners subject to this Subpart must submit a written report of the fuel sulfur content exceeding the applicable sulfur-in-fuel limitation, measured emissions exceeding the applicable sulfur-in-fuel limita-

tion, measured emissions exceeding the applicable equivalent emission rate, and the nature and cause of such exceedances if known, for each calendar quarter, within 30 days after the end of any quarterly period in which an exceedances takes place.

Section 225-1.7 Severability.

Each provision of this Part shall be deemed severable, and in the event that any provision of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 225-1.2(f), (g), (h) and (i).

Text of rule and any required statements and analyses may be obtained from: Michael Jennings, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: airregs@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

Summary of Revised Regulatory Impact Statement

INTRODUCTION

The New York State Department of Environmental Conservation (Department) is proposing to revise 6 NYCRR Subpart 225-1, "Fuel Composition and Use - Sulfur Limitations" and 6 NYCRR Part 200, "General Provisions." Subpart 225-1 imposes limits on the sulfur content of distillate oil, residual oil, and coal fired in stationary sources. The Department is proposing these changes to both implement a statutory requirement and meet our obligations to reduce air pollution. The revisions to Subpart 225-1 will be a component of the State Implementation Plan (SIP) for New York State (NYS) directed at attainment of the particulate matter less than or equal to 2.5 microns in diameter (PM-2.5) national ambient air quality standard (NAAQS), the sulfur dioxide (SO2) NAAQS and the Department's obligations under the regional haze SIP submitted to U.S. Environmental Protection Agency (EPA) on March 15, 2010. This is a requirement flowing from the State's obligations under the Clean Air Act. This is not a mandate on local governments. It applies to any entity that owns or operates a subject stationary source. This proposal will not regulate transportation fuel.

The revisions to Part 200 incorporate references to federal rules and add a definition for "waste oil". The revisions to Subpart 225-1 primarily include the lowering of the sulfur-in-fuel limits for all distillate and residual oils sold, purchased, and/or used in portable (not including non-road engines) or stationary sources in New York State. These revisions will also include the removal of "out-of-date" sulfur-in-fuel tables, expired source specific variances, and the correction of typographical errors. In addition, the Department is removing the variance for emission sources with a maximum operating heat input greater than one million Btu per hour (mmBtu/hr) heat input rate that fire coal and coke in New York City, Nassau, Rockland, and Westchester Counties.

STATUTORY AUTHORITY

The following Sections of the Environmental Conservation Law (ECL) allow the Department to promulgate and implement the proposed regulation: Section 1-0101, Section 3-0301, Section 19-0103, Section 19-0105, Section 19-0301, Section 19-0303, Section 19-0305, Section 19-0325, Section 71-2103, and Section 71-2105.

LEGISLATIVE OBJECTIVES

Article 19 of the ECL was adopted for the purpose of safeguarding the air resources of New York from pollution. To facilitate this purpose, the Legislature bestowed specific powers and duties on the Department including the power to formulate, adopt, promulgate, amend, and repeal regulations for preventing, controlling or prohibiting air pollution. This authority also specifically includes promulgating rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the State as shall or may be affected by air pollution, and provisions establishing areas of the State and prescribing for such areas (1) the degree of air pollution or air contamination that may be permitted therein, and (2) the extent to which air contaminants may be emitted to the air by any air contamination source. In addition, this authority also includes the preparation of a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution recognizing various requirements for different areas of the State. The legislative objectives underlying the above statutes are directed toward protection of the environment and public health. The proposed rulemaking will further the goals of the above referenced statutes by reducing air pollution, specifically SO2 emissions, a criteria pollutant and a precursor to PM-2.5 which in turn is a precursor to visibility-impairing haze from the majority of oil firing stationary sources throughout New York. These reductions will reduce the health impacts of said pollutants by providing cleaner air.

NEEDS AND BENEFITS

Regional haze refers to the presence of light-inhibiting pollutants in the atmosphere. These particles and gases scatter or absorb light to cause a net effect referred to as "light extinction." This scattering and absorbing occurs across the sight path of an observer, thus leading to a hazy condition. Emissions of pollutants such as SO2, PM-10, and PM-2.5 are the primary contributors to visibility problems. These pollutants lend themselves to being transported great distances once they enter the atmosphere. Accordingly, sources contribute to visibility impairment in Class I areas far downwind of their locations, thereby necessitating a regional approach to solving the haze issue.

There are many environmental benefits inherent in the reductions of PM and SO2 that do not explicitly relate to visibility improvement. These reductions will lead to advances in health protection as well. Although downwind rural and urban areas within NYS were not specifically targeted through the Regional Haze Rule, these areas can expect to benefit from improved air quality. In addition to experiencing improved visibility, forested areas such as the Adirondack Park will benefit from reduced PM acid deposition impacts, which are described below. These environmental impacts could also be expected to translate into economic benefits from increased public use of a cleaner and visibly healthier park.

Elevated PM levels are of concern for the New York City metropolitan area, which has been designated as non-attainment for the annual and 24-hour PM-2.5 NAAQS. PM consists of microscopic solid or liquid particles, and is the major cause of the regional haze issue. PM can be emitted directly from stationary sources, or comprised of nitrate and sulfate particles formed through reactions involving NOx and SO2 in the atmosphere. These particles are small enough to be inhaled into the lungs, and can even enter the bloodstream. Ongoing scientific studies show that particulate inhalation, similarly to ozone, leads to health problems such as coughing, difficulty breathing, aggravated asthma, and a higher likeliness for other respiratory disorders. Studies have also shown that elevations in PM concentrations are associated with such cardiovascular threats as irregular heartbeat and non-fatal heart attacks. Increased PM exposure may even cause premature death in those with existing heart or lung disease.

The proposed changes to Subpart 225-1 are intended to reduce the emission of SOx that are the precursors of PM below the present levels. Existing regulations and emission control programs have been successful in the past at reducing these emissions. Regulatory efforts such as the Acid Rain program, past state and federal fuel sulfur limitations for stationary and mobile sources, and efforts like the Clean Air Interstate Rule have had a significant effect on air quality and health. The proposed sulfur-in-fuel limits in this rule are expected to further reduce monitored values of SOx, and to enable and maintain attainment of the NAAQS.

Stakeholder Meetings

The Department held two stakeholder meetings to discuss its proposed revisions to Subpart 225-1. The first stakeholder meeting was held on June 24, 2010 and the second on November 21, 2011. The Department solicited comments on the proposed rule from the stakeholders. Both stakeholder meetings consisted of attendees from the regulated community (oil manufacturers, oil distributors, and end users) to be affected by the proposed regulation, consultants (both technical and legal), and interested environmental groups. There were two primary concerns raised at the stakeholder meetings. The first involved timing because of the statute. Stakeholders were concerned that the Department would be unable to promulgate a regulation prior to the compliance date contained in the statute. The second also concerned compliance dates. Stakeholders were concerned about phase in of compliance dates for the remainder of distillate oil. Many subject facilities use distillate as back up fuel and fire it very infrequently. These facilities requested time to be able to use and/or blend down their reserve fuel. Based upon these comments the Department proposed a phased in compliance approach. While the July 1, 2012 compliance date for number 2 heating oil is in statute and therefore may not be changed by regulation, the regulation requires a July 1, 2014 compliance date for the purchase of complying oil and a July 1, 2016 compliance date for the firing of these oils.

COSTS

Costs to Regulated Parties and Consumers:

Stationary sources subject to the Subpart 225-1 provisions may incur increased fuel oil costs associated with this proposed regulation. There are several factors that may affect fuel oil prices. These factors include but are not limited to fuel availability, price of crude oil, production costs, storage costs, increase in taxes on oil, overall demand based on weather conditions, and natural gas availability and price. The refining process used to produce lower sulfur content oils (less than 500ppm sulfur content oils) is different from the refining process currently used to manufacture oil with a sulfur content greater than 500 ppm. There will be an initial cost to the oil manufacturers associated with conversion of the current refining process to the new refining process. Therefore, the Department anticipates that production costs will increase. However, based on all of the above listed factors there may or may not be an increase in oil prices (there is the

possibility that oil prices could decrease). Setting aside the other factors, the Department conducted a cost analysis based solely upon the increase in production costs and availability of oil to the consumer.

The Department evaluated the availability and production cost of distillate oil with sulfur-by-weight specifications of 500 ppm (low sulfur distillate oil) in 2014 and 15 ppm (ultra-low sulfur distillate oil) in 2018 for the northeast U.S. that corresponds to the MANE-VU Region. The Department based this analysis on currently available refinery studies conducted for the National Oil Heat Research Alliance (NORA) and American Petroleum Institute (API), Energy Information Agency (EIA) data, and a public health benefits study conducted by Northeast States for Coordinated Air Use Management (NESCAUM). The NORA report concludes that as the demand for low and ultra-low sulfur distillate oil increases, the sources of supply and refining capacity for low and ultra-low sulfur distillate oil will be reconfigured for greater production capability. The API report projects that sufficient supplies of low sulfur distillate oil will be available to meet the demand that will be generated from the implementation of a low sulfur distillate oil standard in 2010 for New York State. The NESCAUM report determined overall health care savings from the implementation of both low and ultra-low sulfur distillate oil standards. (Public Health Benefits of Reducing Ground-level Ozone and Fine Particle Matter in the Northeast U.S., A Benefits Mapping and Analysis Program (BENMAP) Study, NESCAUM, January 15, 2008). The Department also conducted a cost analysis based on information from this report in addition to the NORA and API reports and EIA data. Additionally, the Department considered the study conducted by the New York State Energy Research and Development Authority (NYSERDA) and Brookhaven National Laboratories (Low sulfur Home Heating Oil Demonstration Project Summary Report, Energy Research Center, Inc., and Brookhaven National Laboratories, BNL-74956-2005-IR, June 2005 (NYSERDA Report)). The NYSERDA report finds overall savings to consumers in terms of reduced heating equipment service and maintenance costs from using low sulfur distillate oil.

In addition to the above referenced report NYSERDA publishes a weekly "Heating Fuels Report". This report contains the cost difference and oil stock pile figures for both high sulfur and 15 ppm oil. NYSERDA has published this report for about 15 years. NYSERDA also published a report in January 2011 titled "Patterns and Trends - New York State Energy Profiles: 1995-2009"[1]. These reports show some important trends. First, the amount of number 2 heating oil used in New York State has been steadily decreasing since 2005 after its peak usage from 2000 through 2005. The report shows that the amount of number 2 heating oil used between 2005 and 2009 dropped by 40 percent. Preliminary number 2 heating oil use data from 2010 and 2011 show the trend of lower oil usage in the Northeast has continued. Second, price trends show that the difference between 15 ppm and high sulfur oil was as low as a penny per gallon prior to the shutdown of several oil refineries in the Northeast between October 2011 and April 2012. Since the shutdown of these refineries the price difference between 15 ppm and high sulfur oil has once again risen to approximately five cents per gallon.

Costs to State and Local Governments:

State and local governments may incur increased fuel oil costs associated with this proposed regulation because they are required by Section 19-0325 of Chapter 203 of the ECL to purchase and fire 15 ppm sulfur content number 2 heating oil. However, no new recordkeeping, reporting, or other requirements will be imposed on state and local governments based on this proposed rule-making. Based on the Department's permitting data, there are 50 State and local government facilities that have Title V permits and 75 State and local government facilities that have state facility permits (please note that some of these facilities fire both distillate and residual oil and that the facilities that fire residual oil that reside in New York City, Nassau, Rockland, and Westchester counties will not be affected by the proposed sulfur-in-fuel standards). Using the cost per gallon figures from the above reports in combination with the fuel use data and fuel use assumptions, the Department was able to estimate the cost or cost range increase for the State and local government facilities. The four State and local government facilities with Title V permits that fire residual oil will incur an average fuel cost increase of 14,000 dollars per year per facility. The 48 State and local government facilities with Title V permits that fire distillate oil will incur a fuel cost increase of between 21,000 to 24,000 dollars per year per facility. The 24 State and local government facilities with state facility permits that fire residual oil will incur an average fuel cost increase of 1,200 dollars per year per facility. The 56 State and local government facilities with state facility permits that fire distillate oil will incur a fuel cost increase of between 9,000 to 10,000 dollars per year per facility. The projected fuel cost increases will be partially offset by the gain in efficiency and lower maintenance costs that are directly attributable from the use of lower sulfur fuels.

Costs to the Regulating Agency:

The Department will face some initial administrative costs associated with the application review and permitting of the new sulfur-in-fuel limits. No additional monitoring, recordkeeping, or reporting requirements are being proposed under this rule-making. Therefore, no additional costs will be incurred by the regulating agency based on these factors.

LOCAL GOVERNMENT MANDATES

This is not a mandate on local governments. Local governments have no additional compliance obligations as compared to other subject entities. Also, no additional monitoring, recordkeeping, reporting, or other requirements will be imposed on local governments under this rulemaking.

PAPERWORK

The proposed changes to Subpart 225-1 will create no additional paperwork for the facilities subject to the requirements of this rule.

DUPLICATION

The proposed revisions to Subpart 225-1 do not duplicate, overlap, or conflict with any other State or federal requirements.

ALTERNATIVES

The Department evaluated the following alternatives:

(1) Take no action: This alternative could prevent New York State from complying with its obligations under the CAA. If the Department does not implement this regulation, it would not be able to meet its obligations to achieve attainment in the PM-2.5 non-attainment areas throughout New York State. Also, without the promulgation of Subpart 225-1, the State would not be reducing its regional haze impacts in the northeast. The reduction in sulfur-in-fuel limitations will directly result in reductions of SO2, PM-10, and PM-2.5. Reductions of these air contaminants will definitively aid New York in meeting both its attainment goals for PM-2.5 and reduce the State's regional haze impact. Therefore, the "Take no action" alternative has been rejected.

(2) Partial implementation of sulfur-in-fuel standards: The Department could revise Subpart 225-1 to only include the sulfur-in-fuel requirements of Section 19-0325 of the ECL for number 2 heating oil. These revisions would also correct any existing typographical errors and update the regulation to match the permitting nomenclature of Part 201. During the June 24, 2010 stakeholder meeting for Subpart 225-1 the oil manufacturers and distributors expressed concerns that the Department would create added burdens by only including the provisions in ECL Section 19-0325. The oil manufacturers stated that they would need to reconstruct their facilities to be able to manufacture the 15 ppm sulfur content distillate oil. They stated that the manufacturing process was different for distillate oil that has a sulfur content of less than 500 ppm than for distillate oil that has a sulfur content of greater than or equal to 500 ppm. They expressed that the reconstruction was fine as long as they could totally commit and not have to divide their manufacturing between several fuel sulfur contents (which would entail maintenance of multiple processes and equipment). The oil distributors expressed concerns that a partial implementation would require them to maintain multiple fuel oil storage tanks which could result in cross contamination problems. Therefore, based on the stakeholder concerns the "Partial implementation of sulfur-in-fuel standards" alternative has been rejected.

FEDERAL STANDARDS

The proposed revisions to Subpart 225-1 do not exceed any minimum federal standards. The proposed reductions will lower the standards to the point where they would be equivalent to the sulfur-in-fuel standards of both 40 CFR 60 NSPS and 40 CFR 63 National Emission Standards for Hazardous Air Pollutants.

COMPLIANCE SCHEDULE

The Department proposes to promulgate the revisions to Subpart 225-1 by early 2013. The provisions of this rule will take effect based on a phased approach. The initial compliance date, for purchase of number 2 heating oil, is July 1, 2012, in accordance with section 19-0325 of the ECL, for emission sources that fire number 2 heating oil for residential, commercial, or industrial heating applications. The secondary compliance dates are July 1, 2014 for the purchase of all remaining distillate oil and residual oil in New York State and July 1, 2016 for the firing of all distillate oil and residual oil in New York State.

Revised Regulatory Flexibility Analysis

No changes were made to previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

No changes were made to previously published Rural Area Flexibility Analysis.

[1] This report can found at: http://www.nyserda.ny.gov/~/media/Files/Publications/Energy-Analysis/1995__2009__patterns__trends__rpt.ashx?sc__database=web

Revised Job Impact Statement

No changes were made to previously published 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

Comment 1: Since Part 225-1 does not define residential emission sources or number 2 heating oil. Where can I find the definition for these terms? (Commenter 1)

Response to Comment 1: Both terms fall within existing definitions contained in 6 NYCRR Part 200. The term residential emission source is covered by the definition of stationary source in subdivision 6 NYCRR 200.1(cd). The term number 2 heating oil is covered by the definition of distillate oil in subdivision 6 NYCRR 200.1(r).

Comment 2: While Part 225-1 (f) implies that owners and operators of commercial, industrial, and residential emission sources that combust number 2 heating oil on or after July 1, 2012, are limited to combusting number 2 heating oil with a sulfur content of 15 ppm by weight or less; Part 225-1 (g) states that owners and operators of any stationary combustion installation that combust distillate oil are limited to purchasing distillate oil with a sulfur content of 15 ppm by weight or less on or after July 1, 2014, and are limited to combusting distillate oil with a sulfur content of 15 ppm by weight or less on or after July 1, 2016. Why are (f) and (g) different and why is NYSDEC differentiating between emission sources which combust number 2 heating oil and those that combust distillate oil? Under the federal regulations number 2 heating oil is defined as a subset of distillate oil, in essence one in the same. (Commenter 1)

Response to Comment 2: Environmental Conservation Law (ECL) section 19-0325 requires that all number 2 heating oil sold for use in New York State must be at or below the 15 ppm sulfur content by July 1, 2012. DEC cannot change that statutory requirement through rulemaking. The Department, however, determined that this requirement did not apply to all of the distillate oil sold for use throughout the State (e.g. distillate oil used in power plants and emergency generators). Historically, there is a 75 percent heating oil to 25 percent non-heating oil usage in the State. Non-heating oil users generally have much larger stockpiles of their fuel oil on site. Therefore, the Department decided to provide additional time for compliance for the non-heating oil users. However, several commenters stated that they have not had sufficient time to use their previously purchased non-compliant fuel by the July 1, 2012 deadline. As a result we have removed "firing" from the July 1, 2012. For further information, please see pages 7 thru 9 of the RIS under the Section titled Number 2 Heating Oil Sulfur-in-Fuel Limit vs. Distillate Oil Sulfur-in-Fuel Limit.

Comment 3: The implementing statute for the proposed regulation does not limit the firing of number 2 fuel oil in excess of the 15 ppm sulfur limitation. Instead Section 225-1.2(f) of the proposed regulation extends the July 1, 2012 deadline to owners and operators of commercial, industrial, or residential emission sources that fire number 2 heating oil on or after July 1, 2012. We believe that this proposed action supersedes statutory requirements and must be addressed so as not to negatively impact the industry in New York State by limiting the use of number 2 heating oil that does not meet on the standard as of the July deadline, but is currently stored in on-site. The commenters recommend the revision of the proposed language in Section 225-1.2(f) to relate to the sale of number 2 heating oil and not the firing of number 2 heating oil. (Commenters 2, 5 and 7)

Response to Comment 3: The Department has carefully reviewed this issue and concerns about the use of previously purchased non-compliant fuel. As a result, the Department has removed "firing" from the July 1, 2012 deadline. All facilities using number 2 distillate oil will now be limited to firing only number 2 distillate oil with a sulfur content of 15 ppm by weight or less on or after July 1, 2016.

Comment 4: Require that all generating facilities who are not able to comply with the 2016 deadline be allowed to document that they have not purchased non-compliant fuel since the proposed regulations were published in the ENB (Oct 31, 2012). This will ensure that no entity needing relief from the requirement is increasing its inventory. (Commenters 3 and 4)

Response to Comment 4: The Department believes that it has provided sufficient time to comply with the proposed revisions to sulfur limitations in subpart 225-1 based upon outreach conducted during the development of the rulemaking. Subdivisions 225-1.2(e) and (g) require that owners or operators of oil firing equipment purchase compliant oil on or after July 1, 2014 and fire the compliant oil on or after July 1, 2016. The Department believes that the proposed rule adequately requires that subject facilities monitor the purchase of compliant fuels for two years prior to the firing compliance date.

Comment 5: Revise section 225-1.4 to include the option of co-firing natural gas with the higher sulfur fuel to achieve an effective SO2 emission equal to or lower than that resulting from the compliant fuel. (Commenters 3, 4 and 5)

Comment 6: We further recommend that this co-firing calculation be done on a daily basis. (Commenters 3 and 4)

Comment 7: Specifically, we recommend that a second equation be included in this section to demonstrate co-firing of oil and natural gas. (Commenters 3 and 4)

Comment 8: Averaging would allow facilities to burn down existing supply of non-conforming oil without waiting for a fuel shortage or emergency. (Commenter 5)

Response to Comments 5-8: Subdivision 225-1.4(a) states "Fuel mixtures and equivalent emission rate variances only apply to processes or stationary combustion installations. Compliance will be based on the total heat input from all fuels fired, including gaseous fuels." Thus, the use of gaseous fuel is allowed when co-fired with non-compliant oil to reduce the equivalent sulfur dioxide emission rate of a subject emission source. Because existing language permits this, the Department does not believe that specific language needs to be added to this proposed regulation. The Department believes that this is better addressed on a case-by-case basis for each affected facility.

Comment 9: Allow purchase of lower sulfur fuel (i.e. 0.3 percent S) in sufficient quantities such that the resultant fuel would be compliant. Since many of the larger residual oil tanks are not equipped with mixing capabilities, it may be difficult to demonstrate that the as-burned fuel is compliant. The DEC should allow for a calculated or "paper" demonstration of compliance. (a tank has 100 gallons of 0.7 percent S fuel, the purchase of 100 gallons of 0.3 percent S fuel would result in 200 gallons that would have a compliant S content of 0.5 percent) (Commenters 3 and 4)

Response to Comment 9: The Department believes that the proposed rule already allows this and that any facility specific monitoring should be addressed in the subject facilities monitoring requirements and permits on a case-by-case basis.

Comment 10: For facilities where other previously mentioned options are not viable, we recommend that the DEC develop site specific agreements that those facilities be allowed to burn down existing inventory and demonstrate that the SO2emission from the facility do not exceed permit limits. (Commenter 3)

Comment 11: The option of selling inventories of non compliant fuel and transferring the fuel off site presents serious concerns. The existing fuel oil, though possible to sell, has engineering, technical and logistics issues to transfer from storage tanks to barges and would have the increased risk of a significant spill and the liability to sell the product. We do not believe this is therefore an option that the Department should include in its regulations. (Commenter 4)

Comment 12: Please note that should the economics or other operational changes require more oil burn than currently forecast prior to July 2016, these options may not be utilized. However, we strongly believe that they should be incorporated into the regulations. (Commenter 3)

Response to Comments 10-12: The Department respectfully disagrees with the commenter that the regulation should contain facility specific requirements. For facilities that are not able to comply with the regulation a case-by-case determination must be conducted to address the issues. Any case-by-case analysis and determination would be incorporated into both the affected facility's permit and the State Implementation Plan (SIP) as a single source SIP revision.

Comment 13: The footnotes to the solid fuel limit tables refer to the heat content of solid fuel delivered. In practice, the heat input is calculated using CEMS. As long as that is understood then no changes are necessary. (Commenter 4)

Response to Comment 13: Thank you for your comment. No changes are necessary.

Comment 14: Section 225-1.5 Emissions and Fuel Monitoring(b) notes in '' 'performance specification 2', appendix B, part 60 of title 40 of the Code of Federal Regulations (see Table 1, Section 200.9 of this Title)" but the reference in the table is for Section 225-1.7(b). Section 225-1.5, Emissions and Fuel Monitoring (b)(3) states "stationary combustion installations required to use the continuous monitoring specifications under 40 CFR part 75 (see Table 1, Section 200.9 of this Title)", but Part 75 and this section are not included in this table. Section 225-1.5, Emissions and Fuel Monitoring (b)(3) states "stationary combustion installations required to use the continuous monitoring specifications under 40 CFR part 75 (see Table 1, Section 200.9 of this Title)", but Part 75 and this section are not included in this table. (Commenter 4)

Response to Comment 14: Changes to Table 1, Section 200.9 are part of this rulemaking. Please see the Part 200 express terms where these changes are listed.

Comment 15: Exceptions to the sulfur-in-fuel limits, as discussed in Section 225-1.3, appear to be limited to the unavailability of fuel that complies with the requirements of this regulation and neglects fuel short-

ages created by local natural gas curtailment during the heating season. Local natural gas curtailments would not initially trigger the responses required under Section 225-1.3, but would still affect gas fired facilities under Subpart JJJJJJ to maintain their heating capabilities. Since these facilities have a limited allowable annual burn time for fuel oil under non-emergency conditions, it may be difficult for these facilities to burn down number 2 heating oil with a sulfur content of greater than 15 ppm purchased prior to July 1, 2012, within the next two to four years. Any variance or exception should also require that any new fuel added to their storage tanks be compliant under 6 NYCRR Subpart 225-1. Therefore, we recommend the Department add an exception under Section 225-1.3 for facilities which have boilers with dual fuel combustion capabilities and meet the definition of a gas-fired unit under 40 CFR 63 Subpart JJJJJJ National Emissions Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources to allow the combustion of their existing supply of number 2 heating or distillate oil purchased prior to July 1, 2012 and compliant with the regulations that existed at the time of purchase. (Commenter 5)

Response to Comment 15: Please note that the Department has not accepted delegation of 40 CFR 63 Subpart JJJJJJ. Also the Department's regulations do not include the same definition of boiler as 40 CFR 63 Subpart JJJJJJ. Please note that the affected facility will be required to purchase compliant fuel as per the relevant applicability date. Please also see the response to comment numbers 10-12.

Comment 16: Number 2 heating oil is normally considered a subset of distillate oil as presently defined under 6 NYCRR Subpart 200, General Provisions, Section 200.1, paragraph (r) and 40 CFR 60.41c Distillate Oil. Generally, the regulated community tends to use these terms interchangeably. Therefore, using two different regulatory concepts for nearly the same item to create a separate set of regulatory requirements for number 2 heating oil is confusing and can potentially lead a user to misread the requirements for the application that affects them. The Department should either remove the distinction between distillate oil and number 2 heating oil from this regulation; or add to Section 225-1.1 Definitions, wording that specifically defines how these terms are to be applied in this regulation. If the State intends to maintain this difference in other regulations, then the general definitions of Subpart 200 of this Title should also be amended to reflect these concepts. (Commenter 5)

Response to Comment 16: ECL section 19-0325 carved out "number 2 heating oil" from "distillate oil". Therefore, the initial regulatory compliance requirements carve out number 2 heating oil. The Department does not intend to maintain a differentiation between number 2 heating oil and distillate oil beyond July 1, 2016. Once this date occurs, all distillate oils will have the same requirements in the rule. Please also see the response to comments number 2 and 3.

Comment 17: The National Bio-diesel Board (NBB) supports these regulations and New York's efforts to improve air quality through the reduction of allowable sulfur content in heating fuels. (Commenters 6, 8)

Response to Comment 17: Thank you for your support.

Comment 18: The National Bio-diesel Board serves to promote bio-diesel, which is a trans-esterified version of usually vegetable or animal waste oils into a diesel-like fuel that meets ASTM Standard 6751. This standard itself incorporates sulfur limitations of 15 parts per million. So, bio-diesel, as a product, inherently meets any and all sulfur regulations that exist here in New York State as well as across the nation and for what we anticipate coming in the future as the various states transition to ultra-low sulfur fuels for thermal purposes. The concern that - or suggestion I would offer is that under the definition of waste oils, which is one of the first paragraphs in the published material here, it makes specific reference to animal and vegetable waste oils. I think that needs some additional attention, clarification and definition. (Commenter 8)

Response to Comment 18: Subpart 225-1 neither defines nor prohibits bio-diesel or bio-derived oil. This regulation only sets specific sulfur-in-fuel limits on solid and liquid fuels fired throughout New York State. Please note that the definition of waste oil is found in Subpart 225-2 and is beyond the scope of this rule making.

Comment 19: The animal and vegetable fats-based oils often represent the first time that that this material has been used in an oil application. But there are other liquid alternative fuels that are entering the market place without the rigorous testing and evaluation that has been performed on biodiesel in the past. There is a lot of oil that is finding its way into the thermal market outside the umbrella of all of the ASTM standards for heating oil that we normally refer to. We suggest that this needs some closer attention. The Department needs to be very careful to stay ahead of the curve in regulating these fuels as they come into the marketplace. Some of these alternate fuels will have substantial sulfur contents. After all, sulfur, as we already know, is part and parcel of many plant products but, in addition, I know this starts to go outside the realms of this particular regulation, we also have to be concerned about CORID contents and then also mercury and other heavy metals. The proposed sulfur limit for the waste oils is 0.75 percent. That actually is higher than what we have seen in much of the products that are going into bio-diesel manufacturing. We would suggest that this particular category of waste based oils perhaps be subject to their own sulfur standards. We really want to encourage the reprocessing of these oils into a higher quality product such as what occurs with bio-diesel manufacturing in order to reduce air pollution. (Commenters 6 and 8)

Response to Comment 19: Bio-diesels and other bio-derived oils must meet the sulfur-in-fuel requirements listed in Subpart 225-1. As long as they meet the appropriate limits their use will be considered to be compliant with the requirements. However, the Department believes that the request to define bio-derived oils differently in the term 'waste oil' is beyond the scope of this rule making. Please also see the response to Comment number 18.

Comment 20: I would encourage the Department to consider implementation of additional requirements that would require the blending of bio-diesel into Number 6 oil, similar to what New York City has done recently with their bio-heat mandate. Bio-diesel enhances combustion performance cleanliness rather significantly when used with number 6 oil systems. It helps to reduce viscosity, it improves atomization, finer droplets in the atomization process and, thus, cleaner combustion. It helps to keep the burners clean and with all this plus the inherent chemistry of oxygenated content it helps to reduce PAH formation during the combustion process. So, we could encourage the Department to give this further consideration. (Commenter 8)

Response to Comment 20: The Department notes this comment. The proposed regulation does not prohibit a facility from blending bio-diesel or bio-derived oils with their fossil fuels. At this point in time the Department does not plan to mandate the blending and/or use of bio-diesel or bio-derived oil in New York State.

Comment 21: The regulations inappropriately applies retroactively to the firing of number 2 home heating oil. (Commenter 5)

Response to Comment 21: The Department has carefully reviewed this issue and concerns about the use of previously purchased non-compliant fuel. As a result, the Department has removed "firing" from the July 1, 2012 deadline. All facilities using number 2 distillate oil will now be limited to firing only number 2 distillate oil with a sulfur content of 15 ppm by weight or less on or after July 1, 2016. Please also see the response to Comment 3.

Commenters:

1) William Guerrera
2) New York Farm Bureau
3) National Grid
4) Environmental Energy Alliance of New York, LLC
5) US Department of Energy
6) Mr. Raymond Albrecht - National Bio-diesel Board
7) Mr. Darren Suarez - Business Council of New York State Inc.
8) Mr. Raymond Albrecht - National Bio-diesel Board, Public Hearing, Albany
9) Mr. Darren Suarez - Business Council of New York State Inc., Public Hearing, Albany

Department of Financial Services

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

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

Filing No. 252

Filing Date: 2013-03-11

Effective Date: 2013-03-12

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

Action taken: Addition of Part 418 and Supervisory Procedures MB109 and 110 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services (formerly the Superinten-

dent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

Excluding persons servicing loans made under the Power New York Act from the mortgage loan servicer rules is necessary to facilitate the immediate implementation of such loan program so that the anticipated energy efficiency benefits can be realized without delay.

Subject: Registration and Financial Responsibility Requirements for Mortgage Loan Servicers.

Purpose: To require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks).

Substance of emergency rule: NEW PART 418

Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418. 13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. {Section 418.14 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. Servicing loans made pursuant to the Power New York Act of 2011 is excluded. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including "Mortgage Loan", "Mortgage Loan Servicer", "Third Party Servicer" and "Exempted Person".

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a "change of control" of a servicer, sets forth the requirements for prior approval of a change of control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 30 days without a hearing. The section also provides for suspension of a servicer registration without notice or hearing upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant cures the deficiencies its registration can be reinstated. The section further provides that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration, registered servicers and exempted persons (other than insured depository institutions to which Section 418.13 applies. The financial responsibility requirements include a required net worth (as defined in the section) of at least $250,000 plus 1/4 % of total loans serviced or, for a Third Party Servicer, 1/4 of 1% of New York loans serviced; (2) a corporate surety bond of at least $250,000 and (3) a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of $300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service an aggregate amount of loans not exceeding $4,000,000.

Section 418.13 exempts from the otherwise applicable net worth and surety bond requirements, but not the Fidelity and E&O bond requirements, entities that are subject to the capital requirements applicable to insured depositary institutions and that are considered at least adequately capitalized.

Section 418.14 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied. A person who is required to register as a servicer solely because of the changes in the provisions of the rule regarding use of third party servicers which became effective on August 23, 2011 and who files an application for registration within 30 days thereafter will not be required to register until six months from the effective date of the amendment or until the application is denied, whichever is earlier.

NEW SUPERVISORY PROCEDURE MB 109

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent of Financial Services (formerly the Superintendent of Banks) can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

NEW SUPERVISORY PROCEDURE MB 110

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees. It sets forth the time within which the Superintendent of Financial Services (formerly the Superintendent of Banks) must approve or disapprove an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer's operations resulting from a change of control which should be notified to the Department of Financial Services (formerly the Banking Department).

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 8, 2013.

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

Regulatory Impact Statement

1. Statutory authority.

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

Subsection (1) of Section 590 of the Banking Law was amended by the

Subprime Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

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

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

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

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

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

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

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

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

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

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

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

2. Legislative objectives.

The Subprime Law is intended to address various problems related to residential mortgage loans in this State. The Subprime Law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

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

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

The regulations implement the first component of the mortgage servicing statute – the registration of mortgage servicers. In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.11 to 418.13 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7.)

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions implement the intent of the Legislature to register and supervise mortgage loan servicers.

The Department has separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

3. Needs and benefits.

The Subprime Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Previously, the Department of Financial Services (formerly the Banking Department) regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

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

While minimum standards for the business conduct of servicers is the subject of another emergency regulation which has been promulgated by the Department. (3 NYCRR Part 419) Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing mortgage loans and must otherwise comply with the regulations.

As noted above, these regulations relate to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

Further, consumers in this state will also benefit under these regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 30 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are divided into two parts. The Department had separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

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

Under Section 418.2, a person servicing loans made under the Power New York Act of 2011 will not thereby be considered to be engaging in the business of servicing mortgage loans. Consequently, a person would not be subject to the rules applicable to MLSs by reason of servicing such loans.

4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is $3,000.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

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

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

5. Local government mandates.

None.

6. Paperwork.

An application process has been established for potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators. Therefore, the application process is virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

7. Duplication.

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

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

9. Federal standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer – collecting consumers' money and acting as agents for mortgagees in foreclosure transactions – the Department believes that it is imperative that servicers be required to meet this heightened standard.

10. Compliance schedule.

The emergency regulations will become effective on September 17, 2012. Similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

Additionally, the version of Part 418 adopted on an emergency basis effective August 5, 2011 requires holders of mortgage servicing rights to register as mortgage loans servicers even where they have sub-contracted servicing responsibilities to a third-party servicer. Such servicers were given until October 15, 2011 to file an application for registration.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the "Subprime Law") Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of Financial Services (formerly the Banking Department) of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

3. Professional Services:

None.

4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of $3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community

outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Rural Area Flexibility Analysis

Types and Estimated Numbers. Approximately 70 mortgage loan servicers have been registered by the Department of Financial Services or have applied for registration. Very few of these entities operate in rural areas of New York State and of those, most are individuals that do a de minimus business. As discussed below, the Superintendent can modify the requirements of the regulation in such cases.

Compliance Requirements. Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking unit of the Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than $4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs. The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be $3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impacts. The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an online application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations. Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

Rural Area Participation. Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Audited Financial Statements

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

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

Proposed Action: This is a consensus rule making to amend Part 89 (Regulation 89) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 307

Subject: Audited Financial Statements.

Purpose: To comport with the NAIC model rule, upon which section 89.4(c)(2) is based.

Text of proposed rule: Section 89.4(c)(2) is amended as follows:

(2) the company shall submit a letter to the superintendent within 15 business days of the event [detailing with specificity the nature and extent of] *stating whether there were* any disagreements at the decision-making level with the former CPA within the previous two years (whether or not resolved to the CPA's satisfaction) on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure that might or could have been referenced in the CPA's opinion attached to the audited financial report[.] *and detailing with specificity the nature and extent of any such disagreements;*

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

Data, views or arguments may be submitted to: Buffy Cheung, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5551, email: buffy.cheung@dfs.ny.gov

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

Consensus Rule Making Determination

This rulemaking clarifies 11 NYCRR Part 89 by conforming section 89.4(c)(2) to the National Association of Insurance Commissioners ("NAIC") model audit rule. The model audit rule requires an insurer, whenever a Certified Public Accountant ("CPA") is dismissed or resigns, to notify the commissioner (superintendent) and to state whether there were any disagreements with the former CPA. Although it was not the intent, the current regulation appears to require notification only if a disagreement exists. Therefore, this amendment revises section 89.4(c)(2) to clarify that whenever a CPA is dismissed or resigns, the company must notify the Superintendent as to whether there were any disagreements with the former accountant, in conformity with the NAIC model audit rule.

Because the amendment merely clarifies the rule to better express its purpose and to be consistent with the NAIC model audit rule, no person or entity is likely to object. Moreover, adoption of the model is necessary for New York to be an accredited state under the NAIC Accreditation program. NAIC accredited state departments must undergo a comprehensive review every five years by an independent review team to ensure they continue to meet baseline standards. The accreditation standards require that state departments have adequate statutory and administrative authority to regulate an insurer's corporate and financial affairs, and that they have the necessary resources to carry out that authority.

Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act ("SAPA") § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemak-

ing is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or a Rural Area Flexibility Analysis.

Job Impact Statement

Amendment of the regulation will not adversely impact job or employment opportunities in New York, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any insurer subject to the rule.

The text of the current rule does not fully comport with the NAIC model rule, upon which the regulation is based. Because the amendment merely clarifies the rule to better express its purpose, no person or entity is likely to object.

The Department of Financial Services believes that the amended rule will not result in any adverse impact.

Department of Health

EMERGENCY RULE MAKING

Presumptive Eligibility for Family Planning Benefit Program

I.D. No. HLT-13-13-00003-E

Filing No. 251

Filing Date: 2013-03-07

Effective Date: 2013-03-07

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

Action taken: Amendment of section 360-3.7 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 366(1)

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

Specific reasons underlying the finding of necessity: Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The changes to SSL section 366(1) that require the Department, by regulation, to implement criteria for presumptive eligibility for the Family Planning Benefit Program, took effect April 1, 2011. Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file these regulations on an emergency basis.

Subject: Presumptive Eligibility for Family Planning Benefit Program.

Purpose: To set criteria for the Presumptive Eligibility for Family Planning Benefit Program.

Text of emergency rule: Section 360-3.7 is amended to add a new subdivision (e) to read as follows:

(e) Presumptive eligibility for coverage of family planning benefit program (FPBP) services.

(1) An individual will be presumed eligible to receive the MA care, services and supplies listed in paragraph (8) of this subdivision when a qualified provider determines, on the basis of preliminary information, that the individual's family income does not exceed 200 percent of the Federal poverty line applicable to a family of the same size.

(2) For purposes of this subdivision, the individual's family income will be determined according to section 360-4.6 of this Part relating to financial eligibility for MA. The resources of the individual's family will not be considered in determining the individual's presumptive eligibility for coverage of FPBP services.

(3) For purposes of this subdivision, an individual's family includes the individual, any legally responsible relatives and any legally dependent relatives with whom he or she resides. In determining eligibility for children under 21, parental income is disregarded when the child requests confidentiality, has good cause not to provide or is otherwise unable to obtain parental income information.

(4) As used in this subdivision, the term qualified provider means a provider who:

(i) is eligible to receive payment under the MA program;

(ii) provides family planning services, treatment and supplies; and

(iii) has been found by the department to be capable of making presumptive eligibility determinations based on family income.

(5) An individual who has been determined presumptively eligible for coverage of FPBP services must submit a FPBP application to the social services district in which he or she resides, or to the department or its agent, by the last day of the month following the month in which a qualified provider determined him or her to be presumptively eligible.

(6) A qualified provider that has determined an individual to be presumptively eligible for coverage of FPBP services must:

(i) on the day the qualified provider determines the individual to be presumptively eligible, inform the individual that a FPBP application must be submitted to the social services district in which he or she resides, or to the department or its agent, by the last day of the following month in order to continue presumptive eligibility until the day his or her FPBP eligibility is determined;

(ii) assist the individual to complete the FPBP application and submit the application on his or her behalf; and

(iii) within five business days after the day the qualified provider determines the individual to be presumptively eligible, notify the social services district in which the individual resides, or the department or its agent, of its presumptive eligibility determination on forms the department develops or approves.

(7) The period of presumptive eligibility for coverage of FPBP services begins on the day a qualified provider determines the individual to be presumptively eligible. If the individual submits a FPBP application to the social services district in which he or she resides, or to the department or its agent, by the last day of the following month, the period of presumptive eligibility continues through the day the individual's eligibility for FPBP is determined; if the individual fails to submit such an application, the period of presumptive eligibility continues through the last day of the following month.

(8) An individual found presumptively eligible pursuant to this subdivision is eligible for coverage of the following medically necessary FPBP services and appropriate transportation to obtain such services:

(i) hospital based and free standing clinics;

(ii) county health department clinics;

(iii) federally qualified health centers or rural health centers;

(iv) obstetricians and gynecologists;

(v) family practice physicians;

(vi) licensed midwives, nurse practitioners; and

(vii) family planning related services from pharmacies and laboratories.

(9) If a presumptively eligible individual is subsequently determined to be ineligible for FPBP, he or she may request a fair hearing pursuant to Part 358 of this Title to dispute the denial of FPBP, but the presumptive eligibility period will not be extended by such request.

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 June 4, 2013.

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objectives:

Subdivision (1) of section 366 of the Social Services Law (SSL), as amended by Chapter 59 of the Laws of 2011, provides that pursuant to regulations promulgated by the Commissioner of Health, that the Department will establish criteria for presumptive eligibility for the Family Planning Benefit Program. The legislative objective, expressed through SSL section 366(1) is to expand access to family planning services by easing the application process.

Needs and Benefits:

New York included in Chapter 59 of the Laws of 2011, the option afforded by the Affordable Care Act, of providing individuals with a period of presumptive eligibility for family planning-only services. This regulation will provide the necessary criteria, as required by subdivision 1 of Section 366 of the Social Services Law, to implement the Presumptive Eligibility for the Family Planning Benefit Program.

COSTS:

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

This amendment will not increase costs to the regulated parties.

Costs to State and Local Government:

This amendment will not increase costs to the State or local governments. There is potential savings to the Medicaid program, which may be achieved by averting births paid for by the Medicaid program.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

This amendment will not impose any program, service, duty, additional cost, or responsibility on any county, city, town, village, school district, fire district, or other special district.

Paperwork:

This amendment will not impose any additional paperwork requirements.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

Establishing criteria for presumptive eligibility for the Family Planning Benefit Program is mandated by section 366(1) of the SSL. No alternatives were considered.

Federal Standards:

The federal Medicaid statute at section 2303(b) of the Affordable Care Act (ACA) added a new section (1920C) to the Social Security Act that gives States that adopt the new family planning group the option of also providing a period of presumptive eligibility based on preliminary information that an individual meets the eligibility criteria for family planning services in new section 1902(ii).

Compliance Schedule:

Social services districts should be able to comply with the proposed regulations when they become effective.

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 facilities in rural areas, and it does not impose reporting, recordkeeping or other compliance requirements on facilities 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.

NOTICE OF ADOPTION

Language Assistance and Official New York State Prescription Form Requirements

I.D. No. HLT-03-13-00005-A

Filing No. 256

Filing Date: 2013-03-12

Effective Date: 2013-03-27

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

Action taken: Amendment of section 910.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 281(2)

Subject: Language Assistance and Official New York State Prescription Form Requirements.

Purpose: To change the Official New York State Prescription Form to indicate whether an individual is limited in English proficiency.

Text or summary was published in the January 16, 2013 issue of the Register, I.D. No. HLT-03-13-00005-P.

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

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

Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (DOH) in response to this regulation. The public comment period for this regulation ended on March 4, 2013. DOH received two comments. These comments and DOH's responses are summarized below:

1. COMMENT: A comment received from Hinman Straub, P.C. indicated that proposed changes to the Official New York State Prescription form, under this proposed regulation, did not raise any concerns. Comments provided by Hinman Straub, P.C. were centered on the obligations of the dispensing pharmacy when a prescriber indicates that the patient is limited in English proficiency and the lack of any guidance or requirements in the proposed regulations for pharmacies to respond to a prescription indicating that the patient is limited in English proficiency.

RESPONSE: Concerns related to the requirements to respond to a prescription indicating a patient is limited in English proficiency are not addressed under this regulation but it is expected that these concerns will be addressed in regulations to be proposed by the State Education Department in compliance with Section 6829 of the Education Law.

2. COMMENT: One comment was on behalf of the SAFE Rx Coalition and was in support of the proposed changes to the Official New York State Prescription form.

Since both comments to this proposed regulation were supportive, no changes were made to the proposed regulation.

NOTICE OF ADOPTION

Electronic Prescribing, Dispensing and Recordkeeping of Controlled Substances

I.D. No. HLT-03-13-00006-A

Filing No. 257

Filing Date: 2013-03-12

Effective Date: 2013-03-27

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

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

Statutory authority: Public Health Law, section 3308(2)

Subject: Electronic Prescribing, Dispensing and Recordkeeping of Controlled Substances.

Purpose: To allow practitioners to issue prescriptions electronically for controlled substances.

Text or summary was published in the January 16, 2013 issue of the Register, I.D. No. HLT-03-13-00006-P.

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

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

Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (DOH) in response to this regulation. The public comment period for this regulation ended on March 4, 2013. The Department received the following comments. These comments and the Department of Health's responses are summarized below:

1. COMMENT: A commenter representing the pharmacy community questioned whether there is a definition of time related to temporary technological or electronic failure.

RESPONSE: The regulation does not set forth a specific time frame for "temporary." Recognizing that technological failures can vary from a momentary occurrence, corrected within minutes or hours, to a widespread power failure that could last days or even weeks, the definition centers on intervening factors that interfere with a practitioner's ability to use his or her electronic prescribing application that are not reasonably under the control of the practitioner. This flexibility allows the regulation to be appropriately enforced in a wide array of situations, including those that are not necessarily foreseeable.

2. COMMENT: A commenter representing the pharmacy community questioned if there was a time limit on the renewal of waivers.

RESPONSE: Section 80.64 of the proposed regulations would require that a renewal of a waiver be "subject to the same requirements as the original waiver", which means that it will be limited to no more than one year.

3. COMMENT: A commenter representing the pharmacy community questioned whether a prescription generated by a practitioner's computer and transmitted to a pharmacy fax would be considered an electronic prescription.

RESPONSE: New York State Public Health Law § 3302(37) defines an electronic prescription as "a prescription issued with an electronic signature and transmitted by electronic means in accordance with regulations of the commissioner and the commissioner of education and consistent with federal requirements. A prescription generated on an electronic

system that is printed out or transmitted via facsimile is not considered an electronic prescription and must be manually signed." Further, § 3302(38) of the Public Health Law states that '' 'electronic' means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities. 'Electronic' shall not include facsimile." A prescription generated by a practitioner's computer and transmitted to a pharmacy fax would, therefore, not be considered an electronic prescription.

4. COMMENT: A commenter representing the pharmacy community requested clarification relating to recordkeeping for refills of Schedule III, IV and V drugs when the prescription was written on an Official New York State Prescription form or an out-of-state written prescription.

RESPONSE: In the proposed regulation, 10 NYCRR § 80.69(i) provides an option for electronic recordkeeping of refills for prescriptions when they are received electronically, on an Official New York State Prescription form, or on an out-of-state written prescription. Pharmacists utilizing electronic recordkeeping of such refills will be required to "document that the refill information entered into the computer has been reviewed and is correct by manually signing: (i) a hard-copy printout of each day's controlled substance prescription refill data, or: (ii) a bound log book containing a statement that the refill information entered into the computer that day has been reviewed and is correct as shown." Pharmacists who do not utilize an electronic recordkeeping system for such prescriptions and related refills must indicate on the written prescription form "the amount dispensed, the date dispensed, and the signature of the dispensing pharmacist." However, "[w]hen a prescription is received electronically, the prescription and all required annotations shall be retained electronically."

5. COMMENT: Clarification was requested related to 10 NYCRR § § 80.68(c) and 80.70(c), follow-up prescriptions and whether references to oral or verbal prescriptions would include prescriptions transmitted via facsimile.

RESPONSE: The reference to oral and verbal prescriptions in the context of 10 NYCRR § § 80.68(c) and 80.70(c) does not include prescriptions transmitted via facsimile. Under this proposed regulation, follow-up prescriptions to oral and verbal prescriptions for Schedule II narcotics shall be either a written or an electronic prescription with the annotation "Authorization for emergency dispensing." 10 NYCRR § 80.73(g)(5). Follow-up prescriptions to oral and verbal prescriptions for Schedule III, IV, and V shall be by either a written or an electronic prescription with the annotation "Follow-up prescription to oral order." Prescriptions transmitted from a practitioner to a pharmacy via facsimile must be on an Official New York State Prescription form and be manually signed. In this case, the original hard copy Official New York State Prescription form that was transmitted via facsimile and manually signed is required as the follow-up prescription.

6. COMMENT: A commenter representing a diagnostic and treatment center with multiple sites requested clarification related to how a pharmacy would verify that a prescriber has met the DEA requirements to electronically prescribe a controlled substance.

RESPONSE: In accordance with federal requirements in 21 CFR § 1311.102(d), "[b]efore initially using an electronic prescription application to sign and transmit controlled substance prescriptions, the practitioner must determine that the third-party auditor or certification organization has found that the electronic prescription application records, stores, and transmits the [required information] accurately and consistently." Pharmacy applications are also subject to approval by a third party auditor or certification organization to ensure that the application will consistently import, store and display the information required for prescriptions, provide the indication of signing, display the number of refills and import, store and verify the practitioner's digital signature. A breakdown in either system should not allow a prescription to be transmitted. Nothing in the proposed New York State regulations or the federal regulations relieves a practitioner or a pharmacy of their responsibilities to ensure the validity of a controlled substance prescription.

7. COMMENT: A commenter representing a diagnostic and treatment center with multiple sites requested clarification regarding how a pharmacy would know that a prescriber is exempt from the electronic prescribing mandate as a result of a waiver or other exemption listed in the proposed regulation.

RESPONSE: These regulations do not require a pharmacist to verify whether a practitioner was granted a waiver or if the practitioner properly used an enumerated exemption to the statutory requirement to transmit prescriptions electronically. However, nothing in the proposed regulations relieves a practitioner or a pharmacy of their current responsibilities to ensure that any controlled substance prescription is otherwise legal, regardless of the format. Similarly, any person licensed or certified under Article 33 has a continuing duty to promptly notify the Department of an incident of theft, loss, or possible diversion of controlled substances.

8. COMMENT: A commenter representing a diagnostic and treatment center with multiple sites requested clarification related to the provision allowing an oral prescription to be reduced to a written memorandum. The commenter questions whether the regulations will eventually shift to require a pharmacy to reduce an oral prescription solely to an electronic memorandum.

RESPONSE: The provision allowing a pharmacist to reduce an oral prescription to an electronic memorandum is an option in addition to a written memorandum. 10 NYCRR § § 80.68(a)(1) & 80.70(a)(1). This response will not comment on potential future regulations.

9. COMMENT: A commenter representing a diagnostic and treatment center with multiple sites requested clarification regarding an incorrectly written electronic prescription and the ability of the pharmacist to correct the prescription.

RESPONSE: The references to altered prescription information in sections 80.67(k) and 80.69(p) of the regulation do not apply to changes that occur after receipt at the pharmacy. Rather, those sections are only in reference to changes that occur during transmission of the prescription. Changes made by the pharmacy once a prescription is received are governed by the same laws and regulation that apply to paper prescriptions. 21 CFR § § 1306 & 1311.

10. COMMENT: A commenter representing a diagnostic and treatment center with multiple sites requested clarification regarding how a pharmacy can determine if a transmission of a controlled substance prescription was altered.

RESPONSE: Practitioners and pharmacies are required to utilize a third party auditor or certification organization to ensure that their electronic prescribing applications will consistently record, store and transmit the required information accurately and consistently and, for pharmacies, will import, store and display the information required for prescriptions, provide the indication of signing, display the number of refills, and will import, store and verify the practitioner's digital signature. A breakdown in either system should not allow a prescription to be transmitted, and an approved pharmacy application should identify if a controlled substance prescription was converted into a fax transmission. An electronic prescription must be transmitted from the practitioner to the pharmacy in its electronic form. At no time may an intermediary convert an electronic prescription to another form (e.g., facsimile) for transmission. Alteration during transmission can also be identified by comparing the digitally signed prescription retained by the electronic prescription application and the digitally signed prescription retained by the pharmacy. 21 CFR § § 1306 & 1311.

11. COMMENT: Two commenters expressed concerns related to the costs pharmacies and practitioners will need to incur to upgrade their software systems to meet these new requirements in light of significant reductions in health care reimbursements.

RESPONSE: Electronic prescribing of controlled substances and compliance with the related proposed regulations are optional for the next two years. The corresponding Regulatory Impact Statement filed with these regulations indicate pharmacies, practitioners, and institutions will incur costs related to compliance with security requirements set forth in the federal rule allowing for electronic prescribing of controlled substances. Compliance with the federal rule will result in costs related to purchasing computer application systems that comply with federal computer security standards. Please note that the regulations do provide for waivers in cases of economic hardship.

12. COMMENT: A coalition representing a number of consumer advocacy groups and individuals supported a position that the proposed regulation include a requirement related to the section of the electronic prescription wherein prescribers may indicate whether an individual is limited English proficient and, if so, a specification of the preferred language. The coalition suggested a drop down menu in the prescription application that includes pre-populated language options rather than the anticipated free-entry text option.

RESPONSE: These regulations do not require the specific functionality requested by the commenter. However, all prescriptions must comply with the requirements related to Limited English Proficient patients promulgated by the State Education Department pursuant to Section 6829 of the Education Law.

13. COMMENT: The Hospice and Palliative Care Association of New York State submitted a comment concerning the development of new infrastructure for electronic prescribing.

RESPONSE: Pursuant to the federal rule, electronic prescriptions will be transmitted from prescriber to pharmacy, and may be transmitted through an intermediary. 21 CFR § § 1306. These transmissions will be encrypted by the prescriber's electronic prescribing application and subsequently decrypted and authenticated by the pharmacy's application. 21 CFR § 1311. Such encrypted electronic prescriptions for controlled substances can be transmitted through currently available options, including web-based portals. No other new infrastructure need be developed.

14. COMMENT: The Hospice and Palliative Care Association of New

York State expressed concern about a pharmacist's duty to report controlled substance dispensing information in "real time."

RESPONSE: The regulations do not define "real time" or change the current time frame in which a pharmacy must report information about dispensed controlled substances. The Hospice and Palliative Care Association of New York State's concerns will be considered in future regulations which the Department plans to address the definition of "real time." The time frame in which the pharmacy must report information about controlled substances is currently "not later than the 15th day of the next month following the month in which the substance was delivered" to the patient. (10 NYCRR § 80.73(f).)

15. COMMENT: A supportive comment from an individual was received relating to the allowance for electronic prescribing of controlled substances by practitioners.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Rent Allowance Offset (SSI Update) for IRAs & Community Residences and Annual Increase Percentage for Leases for Real Property

I.D. No. PDD-03-13-00003-A

Filing No. 255

Filing Date: 2013-03-12

Effective Date: 2013-03-27

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

Action taken: Amendment of sections 635-6.3 and 671.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b), 41.36 and 43.02

Subject: Rent Allowance Offset (SSI update) for IRAs and Community Residences and Annual Increase Percentage for Leases for Real Property.

Purpose: Update the rent allowance offset for IRAs and Community Residences and the annual increase percentage for leases for real property.

Text or summary was published in the January 16, 2013 issue of the Register, I.D. No. PDD-03-13-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office for People With Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830, email: Barbara.Brundage@opwdd.ny.gov

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Approval of Extension of Temporary Waiver and Suspension Late Payment Charges

I.D. No. PSC-01-13-00006-A

Filing Date: 2013-03-12

Effective Date: 2013-03-12

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

Action taken: On 3/12/13, the PSC adopted an order approving an emergency rule as a permanent rule for an extension of a temporary waiver and suspension of late payment charges to residential customers affected by Superstorm Sandy.

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

Subject: Approval of extension of temporary waiver and suspension late payment charges.

Purpose: To approve extension of temporary waiver and suspension late payment charges.

Substance of final rule: The Public Service Commission, on March 12, 2013, adopted an order approving an emergency rule as a permanent rule for an extension of a temporary waiver and suspension of late payment barriers through January 31, 2013 caused by Superstorm Sandy.

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

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

Assessment of Public Comment

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

(12-M-0501EA2)

NOTICE OF ADOPTION

Approval of Certain Tariff Charges

I.D. No. PSC-01-13-00007-A

Filing Date: 2013-03-12

Effective Date: 2013-03-12

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

Action taken: On 3/12/13, the PSC adopted an order approving an emergency rule as a permanent rule for a temporary waiver of certain tariff charges by BUG & KeySpan d/b/a National Grid NY to provide one-time credits to customers affected by Superstorm Sandy.

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

Subject: Approval of certain tariff charges.

Purpose: To approve certain tariff charges.

Substance of final rule: The Public Service Commission, on March 12, 2013, adopted an order approving an emergency rule as a permanent rule waivers of certain tariff charges by The Brooklyn Union Gas Company d/b/a National Grid, NY and KeySpan Gas East Corporation d/b/a National Grid to provide one-time credits on the bills of certain customers that were affected by Superstorm Sandy.

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

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

Assessment of Public Comment

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

(12-G-0555EA1)

NOTICE OF ADOPTION

Approval of Certain Tariff Charges

I.D. No. PSC-01-13-00008-A

Filing Date: 2013-03-12

Effective Date: 2013-03-12

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

Action taken: On 3/12/13, the PSC adopted an order approving an emergency rule as a permanent rule for a temporary waiver of certain tariff charges by Consolidated Edison Company of New York, Inc. to provide one-time credits to customers affected by Superstorm Sandy.

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

Subject: Approval of certain tariff charges.

Purpose: To approve certain tariff charges.

Substance of final rule: The Public Service Commission, on March 12, 2013, adopted an order approving an emergency rule as a permanent rule, waivers of certain tariff charges by Consolidated Edison Company of New York, Inc. to provide one-time credits on the bills of certain customers that were affected Superstorm Sandy.

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

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

Assessment of Public Comment

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

(12-M-0533EA1)

NOTICE OF ADOPTION

Approval of Certain Tariff Charges

I.D. No. PSC-01-13-00009-A

Filing Date: 2013-03-12

Effective Date: 2013-03-12

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

Action taken: On 3/12/13, the PSC adopted an order approving an emergency rule as a permanent rule for a temporary waiver of certain tariff charges by Orange & Rockland Utilities, Inc. to provide one-time credits to customers affected by Superstorm Sandy.

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

Subject: Approval of certain tariff charges.

Purpose: To approve certain tariff charges.

Substance of final rule: The Public Service Commission, on March 12, 2013, adopted an order approving an emergency rule as a permanent rule, waivers of certain tariff charges by Orange and Rockland Utilities, Inc. to provide one-time credits on the bills of certain customers that were affected Superstorm Sandy.

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

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

Assessment of Public Comment

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

(12-M-0545EA1)

NOTICE OF ADOPTION

Approval of Waiver of Certain Tariff Charges

I.D. No. PSC-01-13-00010-A

Filing Date: 2013-03-12

Effective Date: 2013-03-12

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

Action taken: On 3/12/13, the PSC adopted an order approving an emergency rule as a permanent rule for a temporary waiver of certain tariff charges by New York State Electric and Gas Corporation to provide one-time credits to customers affected by Superstorm Sandy.

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

Subject: Approval of waiver of certain tariff charges.

Purpose: To approve waiver of certain tariff charges.

Substance of final rule: The Public Service Commission, on March 12, 2013, adopted an order approving an emergency rule as a permanent rule, waivers of certain tariff charges by New York State Electric and Gas Corporation to provide one-time credits on the bills of certain customers that were affected Superstorm Sandy.

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

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

Assessment of Public Comment

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

(12-M-0554EA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Revision to the Underground Residential Distribution Provisions

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

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

Proposed Action: The Commission is considering a filing by Niagara Mohawk Power Corporation, d/b/a National Grid to add clarifying language to the Underground Residential Distribution provisions, in P.S.C. No. 220 — Electricity, to become effective June 17, 2013.

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

Subject: Revision to the Underground Residential Distribution provisions.

Purpose: To clarify language to the Underground Residential Distribution provisions.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation, d/b/a National Grid to add clarifying language to the Underground Residential Distribution provisions, in P.S.C. No. 220 – Electricity. The filing has a proposed effective date of June 17, 2013. The Commission may resolve related matters and may take this action for other utilities.

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

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

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

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

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

(13-E-0100SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minor Electric Rate Filing

I.D. No. PSC-13-13-00007-P

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

Proposed Action: The Public Service Commission is considering a tariff filing by Penn Yan Municipal Utilities Board, requesting approval to increase its annual base revenues by approximately $194,309 or 7% in P.S.C. No. 1 — Electricity, to become effective July 1, 2013.

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

Subject: Minor electric rate filing.

Purpose: To approve an increase in annual base electric revenues by approximately $194,309 or 7%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Penn Yan Municipal Utilities Board, requesting approval to increase its annual electricity revenues by approximately $194,309 or 7% to P.S.C. No. 1 - Electricity. The proposed filing has an effective date of July 1, 2013. The Commission may resolve related matters and may take this action for other utilities.

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

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

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

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

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

(13-E-0097SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Potential Waiver of 16 NYCRR 255.9221(d) Completion of Integrity Assessments for Certain Gas Transmission Lines

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

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

Proposed Action: The Commission is deciding whether to approve, modify or reject petition of The Brooklyn Union Gas Company and KeySpan Gas East Corporation d/b/a National Grid for waiver of 16 NYCRR 255.921(d) to allow for additional time to complete integrity assessment.

Statutory authority: Public Service Law, section 65

Subject: Potential waiver of 16 NYCRR 255.9221(d) completion of integrity assessments for certain gas transmission lines.

Purpose: To determine whether a waiver of the timely completion of certain gas transmission line integrity assessments should be granted.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by The Brooklyn Union Gas Company and KeySpan Gas East Corporation d/b/a National Grid for waiver of 16 NYCRR 255.921(d) for certain gas transmission lines to allow for additional time to complete its integrity assessments.

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) 447-6530, email: secretary@dps.ny.gov

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

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

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

(12-G-0562SP1)