

# RULE MAKING ACTIVITIES

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

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

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

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## Adirondack Park Agency

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### NOTICE OF ADOPTION

#### Minor Corrections to Existing Regulations

**I.D. No.** APA-27-13-00015-A

**Filing No.** 887

**Filing Date:** 2013-09-10

**Effective Date:** 2013-09-25

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

**Action taken:** Amendment of Parts 570-575, 577-578, 580-583, 586-588, Appendices Q-4, Q-6, Q-8; repeal of sections 573.7(d)(i)(ix), 577.6(c)(2)(ii), 586.5(c), 588.8; and addition of sections 570.3(an), 572.11(a)(4) and 588.4 to Title 6 NYCRR.

**Statutory authority:** Executive Law, art. 27; and Environmental Conservation Law, sections 15-2709 and 24-0801

**Subject:** Minor corrections to existing regulations.

**Purpose:** Correct minor errors in existing regulations, and implement existing practice.

**Text or summary was published** in the July 3, 2013 issue of the Register, I.D. No. APA-27-13-00015-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Paul Van Cott, Associate Attorney, Adirondack Park Agency, PO Box 99, Ray Brook, NY 12977, (518) 897-4050, email: ptvancot@gw.dec.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

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## Department of Agriculture and Markets

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

#### Incorporation by Reference in 1 NYCRR of the 2013 Edition of National Institute of Standards and Technology (“NIST”) Handbook 44

**I.D. No.** AAM-39-13-00005-P

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

**Proposed Action:** This is a consensus rule making to amend section 220.2(a) of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18 and 179

**Subject:** Incorporation by reference in 1 NYCRR of the 2013 edition of National Institute of Standards and Technology (“NIST”) Handbook 44.

**Purpose:** To incorporate by reference in 1 NYCRR the 2013 edition of NIST Handbook 44.

**Text of proposed rule:** Subdivision (a) of section 220.2 of 1 NYCRR is amended to read as follows:

(a) Except as otherwise provided in this Part, the specifications, tolerances and regulations for commercial weighing and measuring devices shall be those adopted by the [96th] 97th National Conference on Weights and Measures [2011] 2012 as published in the National Institute of Standards and Technology Handbook 44, [2012] 2013 edition. This document is available from the National Conference on Weights and Measures, 1135 M Street, Suite 110, Lincoln, NE 68508, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Director of Weights and Measures, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, or in the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231.

**Text of proposed rule and any required statements and analyses may be obtained from:** Mike Sikula, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3146, email: Mike.Sikula@agriculture.ny.gov

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

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

#### Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 220.2 to incorporate by reference the 2013 edition of National Institute of Standards and Technology Handbook 44 in place of the 2012 edition which is presently incorporated by reference.

The proposed rule is non-controversial. The 2013 edition of Handbook 44 has been adopted by or is in the process of being adopted by every state; manufacturers of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce. Furthermore, the State’s users of commercial weighing and measuring devices also already use devices that conform to the provisions of this document due to its nearly-nationwide applicability. The proposed rule will not,

therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

#### **Job Impact Statement**

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in 1 NYCRR section 220.2 the 2013 edition of National Institute of Standards and Technology Handbook 44 (henceforth, "Handbook 44 (2013 edition)") which contains specifications, tolerances and regulations for commercial measuring devices. The 2012 edition of Handbook 44 is presently incorporated by reference. Handbook 44 (2013 edition) differs from the 2012 edition in that it amends testing requirements for automotive scales, revises requirements for dispensers of petroleum products to allow for cash/credit pricing, requires certain markings on water meters, and allows for electronic weighing of livestock, meat, and poultry. Handbook 44 (2013 edition) has been adopted or is in the process of being adopted by every state; manufacturers and users of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

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## Department of Corrections and Community Supervision

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### NOTICE OF ADOPTION

#### **Contraband Drugs**

**I.D. No.** CCS-28-13-00013-A

**Filing No.** 877

**Filing Date:** 2013-09-06

**Effective Date:** 2013-09-25

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

**Action taken:** Amendment of sections 1010.4(c), (e), 1010.7, 1010.8(a), (b) and (c) of Title 7 NYCRR.

**Statutory authority:** Correction Law, section 112

**Subject:** Contraband Drugs.

**Purpose:** To make technical changes that include referencing an additional test that is available within the current NIK testing tool.

**Text or summary was published** in the July 10, 2013 issue of the Register, I.D. No. CCS-28-13-00013-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, Harriman State Campus - Building 2 - 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.ny.gov

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

The agency received no public comment.

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## Division of Criminal Justice Services

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### NOTICE OF ADOPTION

#### **NYS Accreditation, and Y-STRs and Other Testing**

**I.D. No.** CJS-29-13-00025-A

**Filing No.** 888

**Filing Date:** 2013-09-10

**Effective Date:** 2013-09-25

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

**Action taken:** Amendment of sections 6190.1, 6190.3, 6190.4, 6190.5, 6190.6 and 6192.3 of Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 837(13) and 995-b(1), (9) and (12)

**Subject:** NYS Accreditation, and Y-STRs and other testing.

**Purpose:** Require labs to use mock cases and notify the Division after change in management, and clarify the use and timing of Y-STRs etc.

**Text or summary was published** in the July 17, 2013 issue of the Register, I.D. No. CJS-29-13-00025-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Natasha M. Harvin, Esq., NYS Division of Criminal Justice Services, Alfred E. Smith Office Building, South Swan Street, (518) 457-8413, email: natasha.harvin@dcjs.ny.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**

The agency received no public comment.

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## Department of Environmental Conservation

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### AMENDED

### NOTICE OF ADOPTION

#### **Model Environmental Assessment Forms**

**I.D. No.** ENV-47-10-00015-AA

**Filing No.** 879

**Filing Date:** 2013-09-09

**Effective Date:** 2013-10-07

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

**Action taken:** Amendment of section 617.20 of Title 6 NYCRR.

**Amended action:** This action amends the rule that was filed with the Secretary of State on March 14, 2013, to be effective October 7, 2013, File No. 00262. The notice of adoption, I.D. No. ENV-47-10-00015-A, was published in the February 15, 2012 issue of the *State Register*.

**Statutory authority:** Environmental Conservation Law, section 8-0113(2)(l)

**Subject:** Model Environmental Assessment Forms.

**Purpose:** To provide model forms that may be used to conduct environmental assessments under the State Environmental Quality Review Act.

**Substance of amended rule:** The environmental assessment forms ("EAF") are model forms promulgated by the Department of Environmental Conservation ("DEC") and appended to the State Environmental Quality Review Act ("SEQR") regulations as required by the SEQR (see ECL § 8-0113). The EAFs are used by agencies and boards involved in the SEQR process to assess the environmental significance of actions they may be undertaking, funding or approving. The "Full EAF" has not been substantially revised since 1978 while its sister form, the "Short EAF," was last substantially revised in 1987. In the years since the EAFs were first created, DEC and other SEQR practitioners have gathered a great deal of experience with environmental analyses under SEQR. DEC has brought this experience to bear by preparing modern Full and Short EAFs. The forms, which replace the existing ones set out at 6 NYCRR 617.20, appendices A, B, and C, now include consideration of emerging environmental issues such as climate change. The revised EAFs have been changed to better address planning, policy and local legislative actions, which can have greater impacts on the environment than individual physical changes.

In addition to these substantive changes, the structure of the forms has been updated, to make them more straightforward to use. DEC has merged the substance of the Visual EAF Addendum (6 NYCRR 617.20, former Appendix B) into the Full EAF and then eliminated the Visual EAF Addendum. This will help reduce the multiplicity of forms. The determination of significance has been merged into Part 3 of the forms. Part 2 of

the Short Form has been conformed to the structure of Part 2 of the Full EAF.

Both forms have been reworked and modified in response to public comment. The forms as adopted are available on the DEC's website at the following address: <http://www.dec.ny.gov/permits/70293.html>. The effective date of the new forms is October 7, 2013.

This amended notice of adoption is for technical and typographical corrections to the environmental assessment forms adopted by the Commissioner on January 25, 2012. They are as follows:

Section 617.20, Appendix A, Full-Environmental Assessment Form:

Full EAF Part I, D.2.b.iv, "area" of vegetation proposed to be removed was changed to "acres of aquatic vegetation proposed to be removed."

Full EAF, Part I, D.2.g.ii. In this section, the phrase "metric tons" is changed to "short tons."

Full EAF, Part I, D.2.p. The numerical thresholds have been conformed to mesh with regulatory thresholds involving registration.

Full-EAF, Part I, E.2.h.iv. iv. The question reads as follow: "For each identified, regulated wetland and waterbody on the project site, provide the following information:" As amended, the term "regulated" is added to the text.

Full-EAF, Part I, E.2. i. This question asks whether "the project site is located over, or immediately adjoining, a primary, principal or sole source aquifer?" The change deletes the request to provide the source for the project sponsor's information. The source of the information will now come from the Department's spatial data system.

Full-EAF, Part I, E.2. o. i. and ii. This question asks "does the project site contain any species of plant or animal that is listed by the Federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species?" The change to this question eliminates subsequent parts i. "Species and listing (endangered or threatened)" and ii. "Nature of use of site by the species (e.g., resident, seasonal, transient)". This information will come from the Department's Natural Heritage Program.

Full-EAF, Part I, E.2. p. i. and ii. This question asks "does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern." If yes, guidance will be offered that applicant should contact the DEC program staff. The change to this question eliminates subsequent parts i. "Species and listing" and ii. "Nature of use of site by the species (e.g., resident, seasonal, transient)".

Full EAF, Part I, E.3.h. The question asks "[w]ould the project site be visible from any officially designated and publicly accessible federal, state or local scenic or aesthetic resource?"

The question is changed to read as follows: "Is the project site within five miles of any officially designated and publicly accessible federal, state or local scenic or aesthetic resource?" The five mile distance equates to the distance at which most activities are not a point of interest to the casual observer, and makes the question consistent with the Department's guidance on evaluating visual impact.

Full EAF, Part II, 5.f. The question reads as follows: "If there is a dam located on the site of the proposed action, is the dam [has failed to meet one or more safety criteria on its most recent inspection] in need of repair or upgrade." As indicated, the question is amended to ask whether the dam is in need of repair or upgrade?"

Full EAF, Part II, 6.a.v. In this section, the word "hydrochlorofluorocarbons (HCFCs)" is changed to read hydrochlorofluorocarbons (HFCs)."

Full EAF, Part II, 6.d. The question reads as follows: "The proposed action may reach 50% of [any two or more] of the thresholds in "a" through "c", above."

As indicated by the brackets, the words "any two or more" are removed from the question.

Section 617.20, Appendix B, Short-Environmental Assessment Form:

Questions 10 and 11 of Part I of the Short-EAF ask the applicant to state whether the project will connect to existing public/private water supplies and wastewater utilities, respectively. Both questions contain a follow-up question that asks whether the public/private water supply system and wastewater utilities have capacity assuming that the project will connect to them. The change is to eliminate the follow-up question as the question of capacity is more readily answered by the lead agency as part of its completion of Part II of the Short-EAF.

**Amended rule as compared with adopted rule:** Nonsubstantive changes were made in section 617.20, App. A and App. B.

**Text of amended rule and any required statements and analyses may be obtained from:** Robert Ewing, Environmental Analyst, Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, (518) 402-9167, email: [depprmt@gw.dec.state.ny.us](mailto:depprmt@gw.dec.state.ny.us)

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

Changes to the Model Full and Short-environmental assessment forms do not require a revised RIS, RFA and RAFA since the changes are technical and do not affect the substance of the forms.

#### Revised Job Impact Statement

Changes to the Model Full and Short-environmental assessment forms do not require a JIS or revised JIS since the changes are technical and do not affect the substance of the forms. They would not have any effect on jobs.

## Department of Financial Services

### EMERGENCY RULE MAKING

#### Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

**I.D. No.** DFS-39-13-00002-E

**Filing No.** 875

**Filing Date:** 2013-09-04

**Effective Date:** 2013-09-05

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 MB 109 and MB 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 Superintendent 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.

**Substance of emergency rule:** 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  $\frac{1}{4}$  % of total loans serviced or, for a Third Party Servicer,  $\frac{1}{4}$  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 depository 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.

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.

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 ap-

plicant 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 December 2, 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 through 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 minimis 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 on-line 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 through 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.

## NOTICE OF ADOPTION

### Supplementary Uninsured/Underinsured Motorist Insurance

**I.D. No.** DFS-29-13-00015-A

**Filing No.** 889

**Filing Date:** 2013-09-11

**Effective Date:** 2013-09-25

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

**Action taken:** Amendment of Part 60-2 of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 301 and 3420; and L. 2012, ch. 496; L. 2013, ch. 11

**Subject:** Supplementary Uninsured/Underinsured Motorist Insurance.

**Purpose:** To implement chapter 11 of the Laws of 2013 requiring SUM coverage for employees of fire departments and ambulance services.

**Text or summary was published** in the July 17, 2013 issue of the Register, I.D. No. DFS-29-13-00015-EP.

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

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

The agency received no public comment.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Force-Placed Insurance

**I.D. No.** DFS-39-13-00022-P

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

**Proposed Action:** Addition of Part 227 (Regulation 202) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202, 301 and 302; Insurance Law, sections 301, 308, 2110, 2303, 2304, 2324 and 2403; and arts. 21, 23 and 24

**Subject:** Force-placed insurance.

**Purpose:** To set forth rules regarding, among other things, the rating and placement of, and practices related to, force-placed insurance.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dfs.ny.gov>):** This rule sets forth rules for the rates for and placement of force-placed insurance and prohibits certain practices related to force-placed insurance in order to protect homeowners and investors from harm caused by excessive force-placed insurance rates, questionable business practices and relationships in the force-placed insurance industry, and inadequate notice of force-placed insurance.

Section 227.0 sets forth the purpose of the rule.

Section 227.1 provides definitions applicable to the rule.

Section 227.2 sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners insurance, and that they may purchase voluntary homeowners insurance coverage at any time.

Section 227.3 sets the maximum amount of force-placed insurance coverage that an insurer may issue on a New York property.

Section 227.4 requires an insurer, insurance producer, or affiliate that receives correspondence related to force-placed insurance from a borrower on behalf a servicer to accept any reasonable form of written confirmation of a borrower's existing insurance coverage.

Section 227.5 requires an insurer, insurance producer, or affiliate to refund all force-placed insurance premiums for any period of overlapping insurance coverage within fifteen days of receiving evidence demonstrating that the borrower has had in place hazard insurance coverage that complies with the mortgage's requirements to maintain hazard insurance.

Section 227.6 prohibits certain practices with respect to force-placed insurance, including: the payment of commissions to servicer-affiliated insurance producers; the sharing of force-placed insurance premiums or risk with a servicer affiliate; and issuing force-placed insurance on property serviced by a servicer affiliated with the insurer.

Section 227.7 requires insurers to regularly inform the Department of loss ratios actually experienced and re-file rates when actual loss ratios are below 40 percent, and sets a permissible loss ratio for rate filings to ensure that premiums are set at a rate reasonably related to paid claims.

**Text of proposed rule and any required statements and analyses may be obtained from:** Brian Montgomery, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2296, email: Brian.Montgomery@dfs.ny.gov

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

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

#### Regulatory Impact Statement

1. **Statutory authority:** The Superintendent's authority for the promulgation of this rule derives from Sections 202, 301 and 302 of the Financial Services Law ("FSL") and Sections 301, 308, 2110, 2303, and 2304 and Articles 21, 23 and 24 of the Insurance Law.

Section 202 of the FSL establishes the office of the Superintendent and designates the Superintendent of Financial Services as the head of the Department of Financial Services ("Department").

FSL Section 301 authorizes the Superintendent to take such action as the Superintendent deems necessary to protect and educate users of financial products and services.

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

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

Article 21 of the Insurance Law sets forth the duties and obligations of

insurance producers. Insurance Law Section 2110 provides grounds for the Superintendent to refuse to renew, revoke or suspend the license of an insurance producer.

Article 23 of the Insurance Law authorizes the Superintendent to regulate property/casualty insurance rates. Insurance Law Section 2303 provides that rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of insurers. Insurance Law Section 2304 provides standards for the making of rates and the information that may be furnished in support of a rate filing. Insurance Law Section 2324 prohibits insurers, insurance agents and insurance brokers from providing rebates on, or inducements to purchase, insurance.

Article 24 of the Insurance Law regulates trade practices in the insurance industry by prohibiting practices that constitute unfair methods of competition or unfair or deceptive acts or practices. Insurance Law Section 2403 prohibits persons from engaging in defined or determined violations as defined in Article 24 of the Insurance Law.

2. Legislative objectives: This rule sets forth rules for the rates for and placement of force-placed insurance and prohibits certain practices related to force-placed insurance in order to protect homeowners and investors from harm caused by excessive force-placed insurance rates, questionable business practices and relationships in the force-placed insurance industry, and inadequate notice of force-placed insurance.

An investigation by the Department found that the rates for force-placed hazard insurance bear little relation to insurers' actual loss experience, resulting in high profits, a portion of which insurers commonly pass on to mortgage servicers and their affiliates through commissions, other payments, and reinsurance arrangements, to the detriment of homeowners and investors. The Department also found that homeowners often failed to receive adequate notice that insurers and servicers were force-placing insurance policies on their homes. The rule sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners' insurance, and that they may purchase voluntary homeowners insurance coverage at any time. These provisions of the rule require insurers, insurance producers and their affiliates to comply with recently amended provisions of the federal Real Estate Settlement Procedures Act ("RESPA") that become effective on January 10, 2014. In addition, these provisions require insurers, insurance producers and their affiliates to make clear and conspicuous disclosures on the outside of envelopes to better inform homeowners that the envelopes contain important information, and require insurers, insurance producers and their affiliates to disclose that they or another third party is staffing a mortgage servicer's telephone lines, if that is the case.

The Department's investigation also found that insurers offered financial incentives to mortgage servicers and their affiliates, including commissions to servicer-affiliated insurance producers who performed little or no work. The investigation also found that insurers entered into arrangements that transferred a significant percentage of force-placed insurance profits to affiliates of servicers. In addition, one insurer provided force-placed insurance on mortgages serviced by an affiliate of the insurer. These practices not only artificially inflated premiums charged to homeowners, but created a conflict of interest in that servicers had an incentive to purchase more costly force-placed insurance where they earned a portion of the premiums or profits from the placement of force-placed insurance. This rule prohibits these practices.

Further, actual loss ratios for force-placed hazard insurance have been significantly lower than both the expected loss ratios insurers filed with the Department and the actual loss ratios for voluntary homeowners insurance. Insurers have failed to regularly update and adjust their rates despite these significant discrepancies. This rule requires insurers to regularly inform the Department of loss ratios actually experienced, re-file rates when actual loss ratios are below 40 percent, and sets a permissible loss ratio for rate filings to ensure that premiums are set at a rate reasonably related to paid claims.

3. Needs and benefits: The Department's investigation revealed multiple, industry-wide practices that violate New York law. This rule is necessary to ensure that force-placed insurance market participants comply with New York law. This rule is also necessary to protect homeowners and investors from the harm caused by the multiple law violations.

The Department's investigation of force-placed insurance has resulted in agreements with all admitted insurers writing force-placed insurance in New York. The agreements include many of the key provisions in this rule. This rule will ensure that new entrants to the market operate on a level playing field with current market participants.

4. Costs: Every New York authorized insurer that issues force-placed insurance on New York property has already agreed to the key provisions of this rule regarding prohibited conduct and financial arrangements. As a result, these insurers and their affiliates should incur only minimal additional costs to comply with the requirements of this rule. These minimal costs may vary from insurer to insurer. Insurance producers may also incur minimal additional costs to comply with the notice requirements of this

rule. Any additional costs insurance producers incur as a result of these requirements should be minimal because federal law imposes similar notice requirements. The public benefit of ensuring that rates are not excessive, that improper financial incentives are not paid, and that homeowners receive adequate notice to ensure that they understand their responsibility to maintain homeowners' insurance outweighs the incidental costs of complying with this rule.

The cost to the Department will be minimal because existing personnel are available to verify and ensure compliance with this rule. There are no costs to any other state government agency or local government.

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

6. Paperwork: Section 227.2 of this rule sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners insurance, and that they may purchase voluntary homeowners insurance coverage at any time. These provisions of the rule require insurers, insurance producers and their affiliates to comply with recently amended provisions of the federal Real Estate Settlement Procedures Act ("RESPA") that become effective on January 10, 2014. In addition, these provisions require insurers, insurance producers and their affiliates to make clear and conspicuous disclosures on the outside of envelopes to better inform homeowners that the envelopes contain important information, and require insurers, insurance producers and their affiliates to disclose that they or another third party is staffing a mortgage servicer's telephone lines, if that is the case.

Section 227.7 of this rule requires every insurer that issues force-placed insurance to file force-placed insurance premium rates with a permissible loss ratio of at least 62 percent within 30 days of the effective date of the rule. This rule also requires every insurer that issues force-placed insurance to re-file their rates every three years and, commencing on January 1, 2015 and continuing annually thereafter, to re-file their force-placed insurance premium rates for any force-placed insurance policy form that has had an actual loss ratio of less than 40 percent for the immediately preceding calendar year. This rule also requires every insurer that issues force-placed insurance to report to the Superintendent no later than April 1 of each year, with respect to force-placed insurance policy forms issued during the preceding calendar year, the: (1) actual loss ratio; (2) earned premium; (3) itemized expenses; (4) paid losses; (5) loss reserves; (6) case reserves; and (7) incurred but not reported losses.

7. Duplication: This rule will not duplicate any existing state rule. Portions of this rule track certain provisions of RESPA relating to notices concerning force-placed insurance that become effective on January 10, 2014.

8. Alternatives: This rule addresses excessive rates and improper financial arrangements in the force-placed insurance industry, and ensures that homeowners receive adequate notice of their responsibility to maintain homeowners insurance. The Department has determined that there are no other viable alternatives to this rule. Every insurer subject to this rule has agreed to the key provisions of this rule regarding prohibited conduct and financial arrangements.

9. Federal standards: This rule requires insurers and insurance producers to provide certain additional notices to homeowners in addition to notice requirements concerning force-placed insurance that are required by the recent amendments to RESPA that become effective January 10, 2014.

10. Compliance schedule: This rule will take effect 30 days after publication in the State Register.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: This rule sets forth rules for the rates for and placement of force-placed insurance and prohibits certain practices related to force-placed insurance in order to protect homeowners and investors from harm caused by excessive force-placed insurance rates, questionable business practices and relationships in the force-placed insurance industry, and inadequate notice of force-placed insurance.

This rule is directed to insurers, insurance producers, and their affiliates. Insurers, most insurance producers, and most affiliates of insurers and insurance producers affected by this rule do not come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are not independently owned and operated and/or do not employ 100 or fewer individuals.

This rule will not impose significant burdens on those insurance producers and affiliates of insurers and insurance producers that are small businesses because federal law imposes requirements similar to the provisions of this rule that apply to insurance producers and affiliates of insurers and insurance producers.

2. Compliance requirements: Section 227.2 of this rule sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners' insurance, and that they may purchase voluntary homeowners' insurance coverage at any time. These provisions of the rule require insurance producers and affiliates of insurers

and insurance producers to comply with recently amended provisions of the federal Real Estate Settlement Procedures Act ("RESPA") that become effective on January 10, 2014. In addition, these provisions require insurance producers and affiliates of insurers and insurance producers to make clear and conspicuous disclosures on the outside of envelopes to better inform homeowners that the envelopes contain important information, and require insurance producers and affiliates of insurers and insurance producers to disclose that they or another third party is staffing a mortgage servicer's telephone lines, if that is the case.

3. Professional services: Small businesses to which this regulation may apply will not need professional services to comply with this rule. This rule does not require producers and affiliates to provide notices to homeowners on behalf of mortgage servicers; it merely sets standards for the form of notices that must be provided should producers and affiliates choose to provide notices. Most such producers already provide notices on behalf of servicers, and will not need professional services to revise those notices to comply with this rule. This rule does not apply to or affect local governments.

4. Compliance costs: This rule imposes no compliance costs on local governments. The Department does not anticipate that this rule will impose significant additional costs on small businesses to which this rule may apply. This rule does not require producers and affiliates to provide notices to homeowners on behalf of mortgage servicers; it merely sets standards for the form of notices that must be provided should producers and affiliates choose to provide notices. Most such producers and affiliates already provide notices on behalf of servicers, and will not incur significant costs to revise their existing notices to comply with this rule. Moreover, the recent amendments to RESPA impose requirements similar to this rule, and producers and affiliates should not incur significant additional costs to implement the few additional requirements of this rule.

5. Economic and technological feasibility: Small businesses to which this regulation may apply will not incur an economic or technological impact as a result of this rule. This rule does not require producers and affiliates to provide notices to homeowners on behalf of mortgage servicers; it merely sets standards for the form of notices that must be provided should producers and affiliates choose to provide notices. Most such producers and affiliates already provide notices on behalf of servicers, and will not incur significant costs to revise their existing notices to comply with this rule. Moreover, the recent amendments to RESPA impose requirements similar to this rule. To the extent that small businesses need to update their computer systems to comply with this rule, such an update can be performed in conjunction with the update that will be required to comply with the recent amendments to RESPA, and therefore any costs imposed by this rule should be minimal.

This rule does not apply to or affect local governments.

6. Minimizing adverse impact: This rule applies equally to all insurers and insurance producers, regardless of their size. The rule does not impose any adverse or disparate impact on small businesses. This rule does not apply to or affect local governments.

7. Small business and local government participation: Small businesses and local governments will have an opportunity to participate in the rule making process when the rule is published in the State Register.

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

1. Types and estimated numbers of rural areas: Insurers, insurance producers, and their affiliates to which this regulation applies do business in every county of New York State, including rural areas as defined in section 102(10) of the State Administrative Procedure Act. The proposed regulation will apply to all insurers, insurance producers, and their affiliates, including those located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Section 227.2 of this rule sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners insurance, and that they may purchase voluntary homeowners insurance coverage at any time. These provisions of the rule require insurers, insurance producers and their affiliates to comply with recently amended provisions of the federal Real Estate Settlement Procedures Act ("RESPA") that become effective on January 10, 2014. In addition, these provisions require insurers, insurance producers and their affiliates to make clear and conspicuous disclosures on the outside of envelopes to better inform homeowners that the envelopes contain important information, and require insurers, insurance producers and their affiliates to disclose that they or another third party is staffing a mortgage servicer's telephone lines, if that is the case.

Section 227.7 of this rule requires every insurer that issues force-placed insurance to file force-placed insurance premium rates with a permissible loss ratio of at least 62 percent within 30 days of the effective date of the rule. This rule also requires every insurer that issues force-placed insurance to re-file their rates every three years and, commencing on January 1, 2015 and continuing annually thereafter, to re-file their force-placed insurance premium rates for any force-placed insurance policy form that has

had an actual loss ratio of less than 40 percent for the immediately preceding calendar year. This rule also requires every insurer that issues force-placed insurance to report to the Superintendent no later than April 1st of each year, with respect to force-placed insurance policy forms issued during the preceding calendar year, the: (1) actual loss ratio; (2) earned premium; (3) itemized expenses; (4) paid losses; (5) loss reserves; (6) case reserves; and (7) incurred but not reported losses.

3. Costs: Every New York authorized insurer that issues force-placed insurance on New York property has agreed to the key prohibitions of this rule. As a result, insurers and their affiliates should incur minimal additional costs to comply with the requirements of this rule, including those located in rural areas. These minimal costs may vary from insurer to insurer. Insurance producers and their affiliates may also incur minimal additional costs to comply with the notice requirements of this rule. Any additional costs insurance producers incur as a result of these requirements should be minimal because federal law imposes similar notice requirements. The public benefit of ensuring that rates are not excessive, that improper financial incentives are not paid, and that homeowners receive adequate notice to ensure that they understand their responsibility to maintain homeowners insurance outweighs the incidental costs of complying with this rule.

4. Minimizing adverse impact: The requirements of this rule will apply equally to all insurers, insurance producers, and their affiliates, whether they are located in rural or non-rural areas.

5. Rural area participation: This notice is intended to provide entities in rural and non-rural areas with the opportunity to participate in the rule making process. Interested parties will have an opportunity to participate in the rule making process when the rule is published in the State Register.

#### **Job Impact Statement**

The Department does not believe that this rule will have any impact on jobs or employment opportunities, including self-employment opportunities. This rule sets forth rules for the rates for and placement of force-placed insurance and prohibits certain practices related to force-placed insurance in order to protect homeowners and investors from harm caused by excessive force-placed insurance rates, questionable business practices and relationships in the force-placed insurance industry, and inadequate notice of force-placed insurance.

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## New York State Gaming Commission

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### NOTICE OF ADOPTION

#### **Mega Millions and Raffle Games**

**I.D. No.** SGC-30-13-00009-A

**Filing No.** 885

**Filing Date:** 2013-09-10

**Effective Date:** 2013-09-25

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

**Action taken:** Addition of section 5007.14 and amendment of sections 5007.1, 5007.2 and 5007.7 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, section 104; and Tax Law, sections 1601, 1604, 1612 and 1617

**Subject:** Mega Millions and Raffle Games.

**Purpose:** To provide for a Mega Millions game matrix change and raffle game.

**Text or summary was published** in the July 24, 2013 issue of the Register, I.D. No. SGC-30-13-00009-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Julie B. Silverstein Barker, New York State Gaming Commission, One Broadway Center, Schenectady, NY 12301, (518) 388-3408, email: nylrules@gaming.ny.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**

The agency received no public comment.

NOTICE OF ADOPTION

Recognition of Establishment of the Gaming Commission

I.D. No. SGC-30-13-00010-A

Filing No. 886

Filing Date: 2013-09-10

Effective Date: 2013-09-25

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

**Action taken:** Amendment of Subtitle T, Chapters I, II, IV, and V; addition of Chapter III to Subtitle T of Title 9 NYCRR; repeal of Chapter XLIV (Parts 2800 through 2836) of Title 21 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 102, 103, 104 and 128

**Subject:** Recognition of establishment of the Gaming Commission.

**Purpose:** To make technical changes to references to Racing and Wagering Board and Lottery to Gaming Commission.

**Substance of final rule:** Effective February 1, 2013, Part A of Chapter 60 of the Laws of 2012 consolidated the New York State Division of the Lottery and the New York State Racing and Wagering Board into a new Gaming Commission. Such Chapter of law was codified as Article 1 of the Racing, Pari-Mutuel Wagering and Breeding Law. Pursuant to Sections 123 and 129 of the Racing, Pari-Mutuel Wagering and Breeding Law, unless the context shall otherwise require, whenever the "Racing and Wagering Board" or "Division of Lottery" are referred to or designated in any law or rule pertaining to the functions, powers, obligations and duties transferred and assigned to the Gaming Commission, such reference or designation shall be deemed to refer to the Gaming Commission.

Technical amendments were made throughout the former agencies' regulations to change references from the Racing and Wagering Board, Chairman of the Board, the Lottery, and the Director of the Lottery to the Gaming Commission; to reflect the Gaming Commission's four divisions: Charitable Gaming, Gaming, Lottery and Horse Racing and Pari-Mutuel Wagering; to modernize or delete obsolete references; and to make other style and usage changes.

In addition to the technical references in the regulations, the Division of the Lottery's regulations are being re-codified into Subtitle T of Title 9 of New York Codes, Rules and Regulations so that the Gaming Commission's regulations are within the same Subtitle for ease of reference. A chart is attached for ease of reference.

After the publication of the Notice of Emergency and Proposed Rulemaking, the Gaming Commission made further stylistic changes, in comparison to the Notice of Proposed Rulemaking in the July 24, 2013 State Register (summarizing the proposed rule amendments) and the full text of the proposed rule amendments posted on the Gaming Commission's website, to sections 4000.3, 4001.6, 4002.1, 4002.5, 4002.19, 4003.5, 4003.11, 4003.19, 4003.51, 4007.3, 4009.2, 4009.16, 4010.1, 4011.23, 4011.25, 4011.28, 4020.3, 4021.4, 4022.13, 4025.24, 4026.6, 4032.1, 4032.4, 4038.1, 4038.5, 4038.9, 4038.13, 4039.19, 4040.1, 4043.1, 4043.2(e, g), 4043.10, 4043.12, 4044.2, 4057.2, 4063.1, 4064.11, 4081.7, 4101.7, 4101.13, 4101.24, 4101.38, 4101.39, 4101.40, 4101.41, 4105.1, 4111.32, 4113.2, 4113.5, 4116.1, 4117.3, 4117.5, 4120.1, 4120.2, 4120.13, 4120.15, 4120.17, 4122.46, 4122.47, 4122.49, 4123.1, 4123.2, 4300.1, 4404.17, 4409.5, 4412.2, 4500.1, 4550.4, 4550.10, 4602.1, 4603.3, 4607.14, 4608.5, 4609.1, 4620.3, 4620.13, 4620.19, 4620.22, 4622.25, 4624.1, 4624.8, 4627.8, 4815.11, 4815.12, 4820.56, 4830.16, 5000.6, 5000.8, 5001.8, 5001.14, 5001.18, 5001.27, 5003.2, 5003.3, 5004.6, 5004.9, 5007.13, 5013.2, 5108.2, 5112.5, 5115.1, 5115.5, 5116.3, 5116.7, 5117.1, 5117.2, 5121.4, 5121.5, 5121.7, 5121.8, 5122.1 and 5122.3; to the numbering of Part 4211 (was 4212) and its sections, and to the names of Subchapter A of Chapter II; Parts 4121, 5004 and 5121; and sections in the tables of contents of Parts 5001 and 5003.

REORGANIZATION CHART FOR GAMING COMMISSION RULES SUBTITLE T. New York State Gaming Commission

Division of NYCRR	Title	Recodified Parts	Former Parts
CHAPTER I	Division of Horse Racing and Pari-Mutuel Wagering	Parts 4000-4550	Parts 4000-4500, 5100-5300 and 5402
Subchapter A	Thoroughbred Racing		
Article 1	Rules of Racing	Parts 4000-4044	Parts 4000-4044

Article 2	Steeplechases, Hurdle Races and Hunt Meetings	Parts 4050-4066	Parts 4050-4066
Article 3	New York-Bred Thoroughbreds	Parts 4080-4081	Parts 4080-4081
Subchapter B	Harness Racing	Parts 4100-4123	Parts 4100-4123
Subchapter C	Quarter Horse Racing	Parts 4200-4237	Parts 4200-4237
Subchapter D	Promotion of Equine Research	Part 4250	Part 4500
Subchapter E	Totalisator Systems	Part 4300	Part 5100
Subchapter F	Off-Track Pari-Mutuel Betting	Parts 4400-4412	Parts 5200-5212
Subchapter G	Internet and Telephone Account Wagering	Part 4500	Part 5300
Subchapter H	Adjudicatory Proceedings for Racing	Part 4550	Part 5402
CHAPTER II	Division of Charitable Gaming	Parts 4600-4831	Parts 5600-5831
Subchapter A	Games of Chance General Provisions, Identification and Licensing	Parts 4600-4611	Parts 5600-5611
Subchapter B	Authorized Games of Chance, Games of Chance Currency, Conduct of Games and Supplies and Equipment	Parts 4620-4627	Parts 5620-5627
Subchapter C	Bingo General Provisions	Parts 4800-4801	Parts 5800-5802
Subchapter D	Bingo Licensing and Registration	Parts 4810-4815	Parts 5810-5815
Subchapter E	Bingo Conduct of Games, Hearings and Appeals	Parts 4820-4823 and 4830-4831	Parts 5830-5823 and 5830-5831
CHAPTER III	Division of Lottery	Parts 5000-5013	21 NYCRR Parts 2800-2835
CHAPTER IV	Division of Gaming	Parts 5100-5300	21 NYCRR Part 2836
Subchapter A	Video Lottery Gaming	Parts 5100-5122	21 NYCRR Part 2836
Subchapter B	Indian Gaming	Part 5200	(new)
Subchapter C	[Reserved]	Part 5300	(new)
CHAPTER V	Administration	Parts 5400-5500	Parts 5400-5401
Subchapter A	Public Access to Records	Parts 5400-5401	Parts 5400-5401
Subchapter B	General Provisions	Part 5402	(new)
Subchapter C	Office of Racing Promotion and Development	Part 5500	(new)

Notes:

Subdivision (l) of Section 4002.1 of Subtitle T, Title 9 is repealed. This subdivision repeated the VLT occupational licensing rules in former NYSRWB horse racing rules and is redundant to Subchapter A, Chapter IV, of Subtitle T, Title 9, as amended.

Former Article 4 (Part 4070) of Subtitle T, Title 9 is repealed. This Article, a breakage experiment during 1978-80, is obsolete.

Sections 4081.2 through 4081.6 and section 4082.2 of Subtitle T, Title 9 are repealed. These rules, governing horses foaled during 1979-92 and the 1993 distribution schedule for breeders awards, are obsolete.

Part 5211 of Subtitle T, Title 9 is repealed. This Part, a repetition of the OTB pool distribution contained in statute in the 1970s, is obsolete.

Part 5802 of Subtitle T, Title 9 is repealed. This Part, FOIL and personal privacy rules for bingo regulation, was duplicated elsewhere in former NYSRWB rules and is redundant to Parts 5400 and 5401 of Subtitle T, Title 9, as amended.

CHAPTER III consists of one subdivision, Subdivision A, State Lottery.

There are currently no rules (only RESERVED) in Subdivisions B and C of CHAPTER IV and in Subdivisions B and C of CHAPTER V.

**Final rule as compared with last published rule:** See section list of changes in Revised Regulatory Impact Statement.

**Text of rule and any required statements and analyses may be obtained from:** Rick Goodell, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 388-3408, email: info@gaming.ny.gov

#### Revised Regulatory Impact Statement

The Gaming Commission made stylistic changes, in comparison to the Notice of Proposed Rulemaking in the July 24, 2013 State Register (summarizing the proposed rule amendments) and the full text of the proposed rule amendments posted on the Gaming Commission's website, to sections 4000.3, 4001.6, 4002.1, 4002.5, 4002.19, 4003.5, 4003.11, 4003.19, 4003.51, 4007.3, 4009.2, 4009.16, 4010.1, 4011.23, 4011.25, 4011.28, 4020.3, 4021.4, 4022.13, 4025.24, 4026.6, 4032.1, 4032.4, 4038.1, 4038.5, 4038.9, 4038.13, 4039.19, 4040.1, 4043.1, 4043.2(e, g), 4043.10, 4043.12, 4044.2, 4057.2, 4063.1, 4064.11, 4081.7, 4101.7, 4101.13, 4101.24, 4101.38, 4101.39, 4101.40, 4101.41, 4105.1, 4111.32, 4113.2, 4113.5, 4116.1, 4117.3, 4117.5, 4120.1, 4120.2, 4120.13, 4120.15, 4120.17, 4122.46, 4122.47, 4122.49, 4123.1, 4123.2, 4300.1, 4404.17, 4409.5, 4412.2, 4500.1, 4550.4, 4550.10, 4602.1, 4603.3, 4607.14, 4608.5, 4609.1, 4620.3, 4620.13, 4620.19, 4620.22, 4622.25, 4624.1, 4624.8, 4627.8, 4815.11, 4815.12, 4820.56, 4830.16, 5000.6, 5000.8, 5001.8, 5001.14, 5001.18, 5001.27, 5003.2, 5003.3, 5004.6, 5004.9, 5007.13, 5013.2, 5108.2, 5112.5, 5115.1, 5115.5, 5116.3, 5116.7, 5117.1, 5117.2, 5121.4, 5121.5, 5121.7, 5121.8, 5122.1 and 5122.3; to the numbering of Part 4211 (was 4212) and its sections, and to the names of Subchapter A of Chapter II; Parts 4121, 5004 and 5121; and sections in the tables of contents of Parts 5001 and 5003.

These changes correct spelling, typographical or stylistic errors; conform rule language to the statutory law or to equivalent rules; and recognize that one proposed change was adopted through other permanent rulemaking. Such non-substantive changes make no change in the meaning or effect of these rules and do not necessitate a revised Regulatory Impact Statement.

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

As is evident by the nature of this rulemaking, and the non-substantive changes that were adopted in comparison to the previously published proposed rules, this will not have an adverse effect on jobs or rural areas. This proposal does not implement any substantive changes. As proposed, its amendments change references from the Racing and Wagering Board, Chairman of the Board, the Lottery, and the Director of the Lottery to the Commission; reflect the Commission's four divisions; modernize or omit obsolete language; and standardize style and usage. Such amendments will have no impact on jobs or rural areas. They are intended to consolidate, modernize, and standardize the rules for ease of reference, and as such will have a positive effect on the lawful gaming activities regulated by the Gaming Commission and on the revenue they generate through wagering and horse breeding in New York State. This will not adversely impact rural areas or jobs or local governments, and does not require a Regulatory Flexibility Analysis, Rural Area Flexibility Statement, or Job Impact Statement.

Further, the changes to the adopted rules, in comparison to the published Notice of Proposed Rulemaking in the July 24, 2013 State Register (summarizing the proposed rule amendments) and the full text of the proposed rule amendments posted on the Gaming Commission's website, to sections 4000.3, 4001.6, 4002.1, 4002.5, 4002.19, 4003.5, 4003.11, 4003.19, 4003.51, 4007.3, 4009.2, 4009.16, 4010.1, 4011.23, 4011.25, 4011.28, 4020.3, 4021.4, 4022.13, 4025.24, 4026.6, 4032.1, 4032.4, 4038.1, 4038.5, 4038.9, 4038.13, 4039.19, 4040.1, 4043.1, 4043.2(e, g), 4043.10, 4043.12, 4044.2, 4057.2, 4063.1, 4064.11, 4081.7, 4101.7, 4101.13, 4101.24, 4101.38, 4101.39, 4101.40, 4101.41, 4105.1, 4111.32, 4113.2, 4113.5, 4116.1, 4117.3, 4117.5, 4120.1, 4120.2, 4120.13, 4120.15, 4120.17, 4122.46, 4122.47, 4122.49, 4123.1, 4123.2, 4300.1, 4404.17, 4409.5, 4412.2, 4500.1, 4550.4, 4550.10, 4602.1, 4603.3, 4607.14, 4608.5, 4609.1, 4620.3, 4620.13, 4620.19, 4620.22, 4622.25, 4624.1, 4624.8, 4627.8, 4815.11, 4815.12, 4820.56, 4830.16, 5000.6, 5000.8, 5001.8, 5001.14, 5001.18, 5001.27, 5003.2, 5003.3, 5004.6, 5004.9, 5007.13, 5013.2, 5108.2, 5112.5, 5115.1, 5115.5, 5116.3, 5116.7, 5117.1, 5117.2, 5121.4, 5121.5, 5121.7, 5121.8, 5122.1 and 5122.3; to the numbering of Part 4211 (was 4212) and its sections, and to the names of Subchapter A of Chapter II; Parts 4121, 5004 and 5121; and sections in the tables of contents of Parts 5001 and 5003. These changes correct spelling, typographical or stylistic errors; conform rule language to the statutory law or to equivalent rules; and recognize that one proposed change was adopted through other permanent rulemaking. Such non-substantive changes to the proposed rules make no change in the meaning or effect of these rules, and do not

necessitate a Regulatory Flexibility Analysis, Rural Area Flexibility Statement, or Job Impact Statement.

#### Initial Review of Rule

As a rule that does not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2018, which is no later than the fifth year after the year in which this rule is being adopted.

#### Assessment of Public Comment

One public comment was received in response to the publication of the proposed rule-making in the July 24, 2013 State Register. A racetrack inquired whether its status within an off-track betting region to receive distributions from certain off-track betting wagers could be affected by the proposed repeal of 9 NYCRR part 5211. Such entitlements are created by statute and the racetrack will continue to be entitled to such distributions. The repeal of part 5211, with its obsolete distribution tables, has no effect on the definitions of regions or regional tracks, which are established by statute. The repeal of part 5211 makes no change in commission practice or policy in regard to such entitlements.

## Department of Health

### EMERGENCY RULE MAKING

#### Expand Medicaid Coverage of Enteral Formula

**I.D. No.** HLT-39-13-00003-E

**Filing No.** 876

**Filing Date:** 2013-09-05

**Effective Date:** 2013-09-05

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

**Action taken:** Amendment of section 505.5 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 363-a and 365-a(2)(g); and Public Health Law, section 201(1)(v)

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

**Specific reasons underlying the finding of necessity:** The 2011-2012 Executive Budget placed limitations on Medicaid coverage of enteral formula. In response, stakeholders expressed the concern that these benefits limits were too restrictive as applied to a small population of individuals substantially at risk and nutritionally compromised who require oral supplemental nutrition. Consequently, in Chapter 56 of the Laws of 2012, the Legislature amended section 365-a of the Social Services Law to authorize the Department to establish standards for Medicaid coverage of enteral formula for persons with a diagnosis of HIV infection, AIDS or HIV-related illness, or other diseases and conditions. The proposed regulations carry out this Legislative intent. The Department has determined that it is necessary to adopt the regulations on an emergency basis to protect the health of medically fragile persons with declining medical and nutritional status who need access to enteral formula.

**Subject:** Expand Medicaid Coverage of Enteral Formula.

**Purpose:** To expand Medicaid coverage of enteral formula for individuals with HIV infection, AIDS or HIV-related illness or other diseases.

**Text of emergency rule:** Pursuant to authority vested in the Commissioner of Health by Section 201(1)(v) of the Public Health Law and Sections 363-a and 365-a(2)(g) of the Social Services Law, Section 505.5 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows, to be effective upon filing with the Secretary of State:

Paragraph (3) of subdivision (g) of Section 505.5 of Title 18 is amended to read as follows:

- (3) Enteral nutritional formulas are limited to coverage for:
  - (i) tube-fed individuals who cannot chew or swallow food and must obtain nutrition through formula via tube;
  - (ii) individuals with rare inborn metabolic disorders requiring specific medical formulas to provide essential nutrients not available through any other means; [and for]
  - (iii) children under age 21 when caloric and dietary nutrients from food cannot be absorbed or metabolized[.]; and
  - (iv) persons with a diagnosis of HIV infection, AIDS, or HIV-related illness, or other disease or condition, who are oral-fed and who:

(a) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 18.5 as defined by the Centers for Disease Control, up to 1,000 calories per day; or

(b) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 22 as defined by the Centers for Disease Control and a documented, unintentional weight loss of 5 percent or more within the previous 6 month period, up to 1,000 calories per day; or

(c) require total nutritional support, have a permanent structural limitation that prevents the chewing of food, and the placement of a feeding tube is medically contraindicated.

**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 December 3, 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. In addition, SSL section 365-a(2)(g) authorizes the Commissioner of the Department to establish standards related to enteral formula therapy and nutritional supplements for persons with a diagnosis of HIV infection, AIDS or HIV-related illness or other diseases and conditions.

##### Legislative Objective:

The legislative objective of this authority is to expand Medicaid coverage of enteral formula for individuals with HIV infection, AIDS or HIV-related illness or other diseases and conditions which can result in poor nutritional status.

##### Needs and Benefits:

Enteral nutritional formulas are ordered by practitioners and dispensed by pharmacy or durable medical equipment providers. Medicaid reimburses the cost of enteral formulas for administration via tube, or for oral nutrition when used for treatment of an inborn metabolic disorder, or to address growth and development issues in children. In 2012, the Legislature expanded Medicaid coverage of enteral formulas to persons with a diagnosis of HIV infection, AIDS or HIV-related illness (and potentially to persons with other diseases and conditions), subject to standards established by the Commissioner of the Department. The statutory change was intended to benefit underweight adults and adults who have rapid short term weight loss, who need oral enteral formula to supplement their diet.

The proposed rule would provide coverage of enteral formulas to persons with a diagnosis of HIV infection, AIDS, or HIV-related illness, or other disease or condition, who are oral-fed and who: (a) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 18.5 as defined by the Centers for Disease Control, up to 1,000 calories per day; or (b) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 22 as defined by the Centers for Disease Control and a documented, unintentional weight loss of 5 percent or more within the previous 6 month period, up to 1,000 calories per day; or (c) require total nutritional support, have a permanent structural limitation that prevents the chewing of food, and the placement of a feeding tube is medically contraindicated.

##### Costs:

##### Costs to the State and Local Government:

The expansion of coverage of enteral formula is estimated to result in an increase in Medicaid expenditures of \$3.5 million. Because the local social services districts' share of Medicaid costs is statutorily capped, it is expected that there will be no additional costs to local governments as a result of this proposed regulation.

##### Costs to Private Regulated Parties:

Regulated entities will not incur any costs as a result of this rule.

##### Costs to the Regulatory Agency:

DOH will incur an estimated cost of \$20,000 to implement necessary changes to the automated phone authorization system, which processes the majority of enteral related authorizations for providers. Utilization management measures will reallocate existing staff resources equivalent to one full time employee.

##### Local Government Mandates:

The proposed regulation does not impose any new programs, services,

duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

##### Paperwork:

This amendment will require practitioners and dispensers to obtain any necessary authorizations and complete the related required paperwork to the extent they provide enteral formula to individuals who qualify for coverage under the new benefit expansion.

##### Duplication:

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

##### Alternatives:

The Department could expand the coverage of enteral formula to a more defined group based on age, diagnosis, or other factors. However, the proposed changes are felt to represent the most cost effective method of expanding coverage to at risk individuals not currently covered by the existing benefit limit.

##### Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas and does not result in reimbursement by Medicaid at a higher level than established federal reimbursement for enterals.

##### Compliance Schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

#### Regulatory Flexibility Analysis

##### Effect on Small Business and Local Governments:

This amendment affects 3123 pharmacies and 369 durable medical equipment providers enrolled in the Medicaid program that actively bill Medicaid for enterals. The amendment will expand the enteral benefit which will increase Medicaid utilization and billable claims for these businesses.

The expansion of coverage of enteral formula is estimated to result in an increase in Medicaid expenditures of \$3.5 million. Because the local social services districts' share of Medicaid costs is statutorily capped, it is expected that there will be no additional costs to local governments as a result of this proposed regulation.

##### Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

##### Professional Services:

No new professional services are required as a result of this amendment.

##### Compliance Costs:

There are no direct costs of compliance with this amendment.

##### Economic and Technological Feasibility:

The enteral benefit limit is operationalized through beneficiary information and the practitioner's fiscal order for the enteral formula. Based on this information, a dispenser is able to provide enteral formula for tube-fed individuals who cannot chew or swallow food, individuals with rare inborn metabolic disorders, children when necessary to address growth and development concerns, adults who require supplemental nutrition up to 1,000 calories per day and are either underweight, or have a body mass index under 22 and have demonstrated an unintentional 5% weight loss within the previous 6 month period, and adults with a permanent structural limitation that prevents the chewing of food, for whom a feeding tube is medically contraindicated. Since the amendment will not change the way providers bill for services or affect the way the local districts contribute their local share of Medicaid expenses, there should be no concern about economic or technological difficulties associated with compliance of the proposed regulation.

##### Minimizing Adverse Impact:

No adverse impact is anticipated as the legislation amendment will expand the existing benefit limit.

##### Small Business and Local Government Participation:

The Department invited participation in developing coverage standards through email outreach, a webinar presentation and social media. Proposed coverage change options were presented. The stakeholder feedback received was given substantial weight when making the proposed regulation amendment. A second webinar will be scheduled to inform stakeholders of the specific changes that are being proposed. Upon adoption of the regulation, DOH will inform stakeholders of the changes in coverage and associated prior authorization modifications.

#### Rural Area Flexibility Analysis

##### Types and Estimated Number of Rural Areas:

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

Allegany

Hamilton

Schenectady

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

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

This rule will apply to 3123 pharmacies and 369 durable medical equipment providers in New York State. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

**Compliance Requirements:**

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

**Professional Services:**

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

**Compliance Costs:**

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

**Minimizing Adverse Impact:**

The rule is not expected to have any adverse impact on public and private sector interests in rural areas.

**Opportunity for Rural Area Participation:**

The Department meets on a regular basis with providers groups such as the New York Medical Equipment Providers (NYMEP), who represents some rural providers. Webinar and social media sessions are accessible to providers statewide, including rural providers.

**Job Impact Statement**

**Nature of Impact:**

This rule will result in increased Medicaid billable claims for 3123 pharmacies and 369 durable medical equipment providers. The increase in revenue should not have an adverse impact on jobs and employment opportunities within these businesses.

**Categories and Numbers Affected:**

This rule, which increases Medicaid revenue for providers, should not have any adverse effect on employment opportunities.

**Regions of Adverse Impact:**

No region of New York State should realize adverse impact from this rule given the potential increase in Medicaid revenue for providers.

**Minimizing Adverse Impact:**

No adverse impact is anticipated given that this rule expands the existing benefit limit.

**Self-Employment Opportunities:**

The rule is expected to have minimal impact on self-employment opportunities since it expands the benefit limit and the majority of providers that will be affected by the rule are not small businesses or sole proprietorships solely dispensing enterals to Medicaid beneficiaries.

**Department of Labor**

**NOTICE OF ADOPTION**

**Responding to Requests for Information and Employer Relief of Charges**

**I.D. No.** LAB-30-13-00011-A

**Filing No.** 906

**Filing Date:** 2013-09-12

**Effective Date:** 2013-10-01

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

**Action taken:** Repeal of section 472.12; and addition of new section 472.12 to Title 12 NYCRR.

**Statutory authority:** Labor Law, sections 21(11), 530(1), 575 and 581(e)(3)

**Subject:** Responding to Requests for Information and Employer Relief of Charges.

**Purpose:** To provide a procedure for timely and adequate response to requests for information and for relief from charges.

**Text or summary was published** in the July 24, 2013 issue of the Register, I.D. No. LAB-30-13-00011-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Amy C. Karp, Department of Labor, State Office Campus, Building 12, Albany, NY 12240, (518) 457-7350, email: regulations@labor.ny.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 2018, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

**Assessment of Public Comment**

The agency received no public comment.

**Office of Mental Health**

**NOTICE OF ADOPTION**

**Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth**

**I.D. No.** OMH-29-13-00010-A

**Filing No.** 881

**Filing Date:** 2013-09-09

**Effective Date:** 2013-09-25

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

**Action taken:** Amendment of Part 578 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09 and 43.02

**Subject:** Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth.

**Purpose:** To remove the trend factor from the 2013-14 Medicaid rate calculation and adjust the occupancy rates.

**Text or summary was published** in the July 17, 2013 issue of the Register, I.D. No. OMH-29-13-00010-EP.

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

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

**Initial Review of Rule**

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

**Assessment of Public Comment**

The agency received no public comment.

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## Public Service Commission

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**NOTICE OF ADOPTION****Adopting Emergency Rule As a Permanent Rule**

**I.D. No.** PSC-27-13-00009-A

**Filing Date:** 2013-09-10

**Effective Date:** 2013-09-10

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

**Action taken:** On 9/10/13, the PSC adopted an order approving an emergency rule as a permanent rule setting temporary rates for National Fuel Gas Distribution Corporation.

**Statutory authority:** Public Service Law, sections 66, 72 and 114

**Subject:** Adopting emergency rule as a permanent rule.

**Purpose:** To adopt emergency rule as a permanent rule.

**Substance of final rule:** The Commission, on September 10, 2013, adopted an emergency rule as a permanent rule setting temporary rates for National Fuel Gas Distribution Corporation, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(13-G-0136EA1)

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Major Water Rate Filing**

**I.D. No.** PSC-39-13-00019-P

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

**Proposed Action:** The Commission is considering a proposal filed by United Water New York Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Water Service — P.S.C. 1.

**Statutory authority:** Public Service Law, sections 89-c(1) and (10)

**Subject:** Major water rate filing.

**Purpose:** To consider a proposal to increase annual operating revenues by about \$21.3 million or 28.9%.

**Public hearing(s) will be held at:** 10:00 a.m., December 11, 2013 at Public Service Commission, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY. (Evidentiary Hearing)\*

\*There could be requests to reschedule the hearings. Notification of the start of the hearing or any subsequent scheduling changes will be available at the DPS Web Site ([www.dps.state.ny.us](http://www.dps.state.ny.us)) under Case 13-W-0295.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Substance of proposed rule:** The Commission is considering a proposal filed by United Water New York Inc. (UWNY or the Company) which

would increase its annual operating revenues by about \$21.3 million or 28.9% for the rate year ending May 31, 2015. Under the Company's proposal a typical residential annual bill would increase 19.8%, to \$863 from \$720. In addition, the Company is proposing a facility charge by meter size, a change from quarterly to monthly billing, and other tariff changes. The statutory suspension period for the proposed filing runs through May 28, 2014. The Commission may accept or reject the UWNY proposal in whole or in part and may resolve related matters.

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

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

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

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

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

(13-W-0295SP1)

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

**NY-Sun Initiative Within the Customer-Sited Tier of the RPS Program**

**I.D. No.** PSC-39-13-00010-P

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

**Proposed Action:** New York State Energy Research and Development Authority requests revisions to the Renewable Portfolio Standard (RPS) to fully fund the NY-Sun Initiative for 2014-2015 and allow NYSERDA increased flexibility in solar PV fund allocation and program design.

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

**Subject:** NY-Sun initiative within the Customer-Sited Tier of the RPS Program.

**Purpose:** To increase the statewide adoption of customer sited photovoltaic solar generation through the NY-Sun Initiative.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, the New York State Energy Research and Development Authority's (NYSERDA) petition "NY-Sun 2014-2015 Funding Considerations and Other Program Modifications" dated September 5, 2013, which seeks authorization to, among other things, : (1) reallocate \$108 million from the Main Tier program budget to fund NY-Sun for years 2014 – 2015; (2) allow NYSERDA flexibility, in consultation with DPS Staff, to establish and adjust the allocation of funds among the standard offer and competitive PV programs; (3) allow NYSERDA flexibility to redesign the standard offer solar PV program to lower the incentives on a regional basis in response to achieving a designated threshold amount of megawatts under contract (MW Block Program); (4) eliminate the "40% of installed cost" rule for the standard offer PV program; and (5) allow NYSERDA the flexibility to transition the competitive solar PV program to a MW Block performance-based incentive program. As indicated in the *Notice Soliciting Comments and Notice of Technical Conference* issued in Case 03-E-0188 on September 13, 2013, the Commission is seeking comments regarding all the matters and issues raised by or relating to NYSERDA's petition.

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

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

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

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

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

(03-E-0188SP42)

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

**Allocation of Uncommitted SBC-III Funds**

**I.D. No.** PSC-39-13-00011-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take any other action regarding a request by NYSEERDA to allocate uncommitted SBC III funds to support the Power Electronics Manufacturing Consortium (PEMC).

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

**Subject:** Allocation of uncommitted SBC-III funds.

**Purpose:** Reallocate uncommitted SBC-III funds to the PEMC.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, a petition filed by NYSEERDA seeking the Commission's approval to allocate \$7.5 million in uncommitted SBC III funds toward the support of the New York-led Power Electronics Manufacturing Consortium (PEMC), contingent upon award of federal funds. The PEMC will be headquartered in New York and will focus on the design and development of power electronic devices and systems that are vital components to New York's energy initiatives as outlined in NYSEERDA's T&MD Portfolio and the Governor's New York Energy Highway Blueprint.

**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:** Kathleen H. Burgess, 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.

(10-M-0457SP6)

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

**EEPS Program Years 2014 - 2015**

**I.D. No.** PSC-39-13-00012-P

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

**Proposed Action:** The Commission is considering adoption of a staff proposal to modify the Energy Efficiency Portfolio Standard (EEPS) program for the program years 2014 - 2015.

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

**Subject:** EEPS program years 2014 - 2015.

**Purpose:** To streamline certain administrative requirements for EEPS program years 2014 - 2015 established in previous Commission orders.

**Substance of proposed rule:** The Energy Efficiency Portfolio Standard (EEPS) is currently authorized through 2015. Department Staff have prepared an EEPS Restructuring Proposal that provides for modifications to the current EEPS program for program years 2014 - 2015 to streamline certain administrative requirements set forth in previous Commission orders in Case 07-M-0548. As indicated in the *Notice Soliciting Comments and Notice of Technical Conference* issued on September 13, 20123

in Case 07-M-0548, the Commission is seeking comments regarding all the matters and issues raised by the proposal. The Commission is considering the EEPS Restructuring Proposal and may take action on some or all of the issues raised in or related to the Restructuring Proposal.

**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:** Kathleen H. Burgess, 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.

(07-M-0548SP78)

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

**Transportation Service Under Service Classification (SC) Nos. 7 and 14**

**I.D. No.** PSC-39-13-00013-P

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

**Proposed Action:** The Commission is considering whether to grant a petition for rehearing on Order approving a KeySpan Gas East d/b/a National Grid tariff filing modifying SC-7 and SC-14 gas transportation tariffs.

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

**Subject:** Transportation service under Service Classification (SC) Nos. 7 and 14.

**Purpose:** To modify and clarify provisions related to electric generators that take transportation service under (SC) Nos. 7 and 14.

**Substance of proposed rule:** The Commission is considering whether to grant, deny or clarify, in whole or in part, a petition filed by the Long Island Power Authority (LIPA) for rehearing and clarification of the Commission's May 17, 2013 Order on the KeySpan Gas East Corporation d/b/a National Grid (the Company) modification to its gas tariff schedule, P.S.C. No. 1 - Gas. LIPA seeks rehearing of: (a) the Commission's approval of the New Imbalance Penalties and (b) the Commission's denial of LIPA's request for a phase-in of value added charge (VAC) and annual minimum bill obligation (MBO) charges. LIPA also requests clarification of the Commission's decision with respect to a generic examination of the VAC, as proposed by the Company.

**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:** Kathleen H. Burgess, 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-G-0063SP2)

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

**Waiver of PSC Regulations, 16 NYCRR sections 85-2.9(d), (e), 86.3(a)(1)(i), (iii), (2), (b)(2), 86.4(b) and 88.4(a)(4)**

**I.D. No.** PSC-39-13-00014-P

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

**Proposed Action:** Waiver of certain provisions of 16 NYCRR regarding requirements for applications under PSC Article VII for Certificates of Environmental Compatibility and Public Need, requested in a motion by applicant, Poseidon Transmission LLC.

**Statutory authority:** Public Service Law, sections 4 and 122

**Subject:** Waiver of PSC regulations, 16 NYCRR sections 85-2.9(d), (e), 86.3(a)(1)(i), (iii), (2), (b)(2), 86.4(b) and 88.4(a)(4).

**Purpose:** To consider a waiver of certain regulations relating to the content of an application for transmission line siting.

**Substance of proposed rule:** The Public Service Commission is considering a motion by Poseidon Transmission LLC (Poseidon) for a waiver or partial waiver of certain requirements for the content of an application for authority to construct and operate an electric transmission line pursuant to a Certificate of Environmental Compatibility and Public Need under Public Service Law Article VII. Poseidon proposes to construct and operate a 500 megawatt underground/submarine high-voltage Direct Current transmission line, connecting Long Island Power Authority's Ruland Road Substation in the Town of Huntington, New York to Public Service Electric and Gas's Deans Substation in South Brunswick, New Jersey. It anticipates filing its application on or about October 1, 2013. Poseidon specifically seeks waivers of 16 NYCRR sections 88.4(a)(4); 86.3(a)(1)(i) & (iii); 85-2.9(d) & (e); 86.3(a)(2); 86.3(b)(2); and 86.4(b), relating to a System Reliability Impact Study, maps, and aerial photographs. The Commission may grant, deny, or modify the relief requested or provide an alternate resolution proposed in responses to the motion or otherwise related to the motion.

*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:** Kathleen H. Burgess, 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-T-0391SP1)

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

**Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)**

**I.D. No.** PSC-39-13-00015-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve, modify, or reject a Petition from the Town of Clare to waive 16 NYCRR Sections 894.1 through 894.4 pertaining to the franchising process for the Town of Clare, St. Lawrence County.

**Statutory authority:** Public Service Law, section 216(1)

**Subject:** Waiver of 16 NYCRR sections 894.1 through 894.4(b)(2).

**Purpose:** To allow the Town of Clare, to waive certain preliminary franchising procedures to expedite the franchising process.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, modify, or reject the Petition of the Town of Clare, St. Lawrence County, to waive the requirements of 16 NYCRR, Sections 894.1 through 894.4 to expedite the franchising process.

*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:** Kathleen H. Burgess, 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-V-0377SP1)

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

**Whether to Permit the Use of the PM-2104 Electric Submeter**

**I.D. No.** PSC-39-13-00016-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Intech21, Inc., for the approval to use the PM-2104 electric submeter.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Whether to permit the use of the PM-2104 electric submeter.

**Purpose:** Pursuant to 16 NYCRR Parts 93 and 96, is necessary to permit the use of the PM-2104 electric submeter.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Intech21, Inc., to use the PM-2104 electric submeter in residential submetering applications.

*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:** Kathleen H. Burgess, 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-0401SP1)

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

**NY-Sun Initiative Within the Customer-Sited Tier of the RPS Program**

**I.D. No.** PSC-39-13-00017-P

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

**Proposed Action:** The New York State Energy Research and Development Authority requests authorization to explore a statewide program coordinating the Long Island Power Authority's and Commission's Renewable Portfolio Standard solar PV programs for efficiency and consistency.

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

**Subject:** NY-Sun initiative within the Customer-Sited Tier of the RPS Program.

**Purpose:** To improve the efficiency and delivery of the RPS solar PV.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, the New York State Energy Research and Development Authority's (NYSERDA) petition "NY-Sun 2014-2015 Funding Considerations and Other Program Modifications" dated September 5, 2013, which requests, among other things, that the Commission consider a better-coordinated statewide photovoltaic electric generation incentive program, including Long Island and the electric customers of the Long Island Power Authority (LIPA) and whether such a statewide program would achieve greater efficiencies and success. As indicated in the Notice Soliciting Comments and Notice of Technical Conference issued on September 13, 2013 in Case 03-E-0188, the Commission is seeking comments regarding all the matters and issues raised by or related to the NYSEDA's petition.

**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:** Kathleen H. Burgess, 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.

(03-E-0188SP43)

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

**EEPS Program Years 2014 - 2020**

**I.D. No.** PSC-39-13-00018-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 adoption of a staff proposal for the restructuring of the Energy Efficiency Portfolio Standard (EEPS) for the years 2014 - 2020.

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

**Subject:** EEPS program years 2014 - 2020.

**Purpose:** Modify EEPS program rules for years 2014-2015 and authorize a new EEPS structure for program years 2016-2020.

**Substance of proposed rule:** The Energy Efficiency Portfolio Standard (EEPS) is currently authorized through 2015. Department Staff have prepared an EEPS Restructuring Proposal that provides, among other things, for modifications to the current EEPS program for program years 2014-2015 and presents a proposal to restructure EEPS for the period 2016-2020. The Restructuring Proposal sets forth a path to revamp EEPS by addressing primary issues that have been raised by both stakeholders and the Moreland Commission. As indicated in the *Notice Soliciting Comments and Notice of Technical Conference* issued on September 13, 2013 in Case 07-M-0548, the Commission is seeking comments regarding all the matters and issues raised by the proposal. The Commission is considering the EEPS Restructuring Proposal and may take action on some or all of the issues raised in or related to the proposal.

**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:** Kathleen H. Burgess, 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.

(07-M-0548SP77)

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

**Energy Efficiency Portfolio Standard, System Benefits Charge, and Renewable Portfolio Standard Funds and a Green Bank**

**I.D. No.** PSC-39-13-00020-P

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

**Proposed Action:** The Commission is considering a proposal by the New York State Energy Research and Development Authority to reallocate and repurpose \$165.6 million in uncommitted funds previously collected for other Commission programs including SBC, EEPS and RPS.

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

**Subject:** Energy Efficiency Portfolio Standard, System Benefits Charge, and Renewable Portfolio Standard funds and a Green Bank.

**Purpose:** To encourage the financing and development of clean energy projects.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition submitted by the New York State Energy Research and Development Authority (NYSERDA) seeking to reallocate and repurpose \$165.6 million in uncommitted funds previously collected from ratepayers and allocated to NYSEDA's Energy Efficiency Portfolio Standard (EEPS) I, and System Benefits Charge (SBC) III funds, uncommitted utility EEPS I funds, and NYSEDA Renewable Portfolio Standard (RPS) funds to provide initial capitalization for the New York Green Bank (Green Bank). Proposed by Governor Cuomo in his 2013 State of the State address, the Green Bank is a \$1 billion initiative intended to stimulate capital markets to finance clean energy projects. NYSEDA's petition requests \$165.6 million for the initial operations of the Green Bank. As indicated in the Notice Soliciting Comments and Notice of Technical Conference issued on September 13, 2013 in Case 13-M-0412, the Commission is seeking comments regarding all the matters and issues raised by or related to NYSEDA's petition.

**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:** Kathleen H. Burgess, 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-M-0412SP1)

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**Department of Taxation and  
Finance**

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**NOTICE OF ADOPTION**

**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith**

**I.D. No.** TAF-28-13-00005-A

**Filing No.** 880

**Filing Date:** 2013-09-09

**Effective Date:** 2013-09-09

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

**Action taken:** Amendment of section 492.1(b)(1) of Title 20 NYCRR.  
**Statutory authority:** Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

**Subject:** Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

**Purpose:** To set the sales tax component and the composite rate per gallon for the period July 1, 2013 through September 30, 2013.

**Text or summary was published** in the July 10, 2013 issue of the Register, I.D. No. TAF-28-13-00005-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Thomas E. Curry, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

**Assessment of Public Comment**

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

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

**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith**

**I.D. No.** TAF-39-13-00006-P

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

**Proposed Action:** Amendment of section 492.1(b)(1) of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

**Subject:** Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

**Purpose:** To set the sales tax component and the composite rate per gallon for the period October 1, 2013 through December 31, 2013.

**Text of proposed rule:** Pursuant to the authority contained in subdivision First of section 171, subdivision (c) of section 301-h, subdivision 7 of section 509, subdivision (b) of section 523, and subdivision (a) of section 528 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendment to the Fuel Use Tax Regulations, as published in Article 3 of Subchapter C of Chapter III of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxii) to read as follows:

	Motor Fuel			Diesel Motor Fuel		
	Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxi) July-Sept. 2013	16.0	24.0	42.6	16.0	24.0	40.85
(lxxii) Oct.-Dec. 2013	16.0	24.0	42.6	16.0	24.0	40.85

**Text of proposed rule and any required statements and analyses may be obtained from:** Thomas E. Curry, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

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

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

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

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

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

**Mailing of Certain Excise Tax Documents**

**I.D. No.** TAF-39-13-00007-P

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

**Proposed Action:** Amendment of sections 68.3, 68.4, 73.1 and 417.2 of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subdivision First, 436 (not subdivided) and 475 (not subdivided)

**Subject:** Mailing of certain excise tax documents.

**Purpose:** To eliminate references to the mailing of certain excise tax documents by the Department.

**Text of proposed rule:** Pursuant to the authority contained in subdivision First of section 171, section 436 (not subdivided) and section 475 (not subdivided) of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Alcoholic Beverage Tax Regulations as published in Subchapter H of Chapter I, the Cigarette Tax Regulations as published in Article 1 of Subchapter I of Chapter I, and the Motor Fuel Tax Regulations as published in Article 1 of Subchapter A of Chapter III of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, such amendments to read as follows:

Section 1. Paragraph (2) of subdivision (c) of section 68.3 is amended to read as follows:

(2) Upon approval of the application, the department will issue a special permit to the applicant. [The permit will be mailed to the applicant by ordinary mail or may be received in person by the applicant.] Such permit will set forth the applicant's name and address; the two-week period of time for which such permit is valid; and any additional information or identifying details as may be required by the department. The permit will also require purchase information to be completed with respect to each and every purchase by the applicant concerning the liquors imported.

Section 2. Subparagraph (ii) of paragraph (3) of subdivision (g) of section 68.4 is amended to read as follows:

(ii) Except for liquor distributors importing under the special two-week permit, the names of all registered distributors of liquors will be contained in the current listings of liquor distributors prepared by the Department of Taxation and Finance. The department will periodically [provide] *make available* such a listing to [each transporter] *all transporters* importing liquors into the State and to [each fully] *all* registered liquor [distributor. If the registration of a distributor is] *distributors. Additionally, the department will make available listings of distributors whose registration has been cancelled or suspended*], the department will concurrently therewith notify all such transporters and registered distributors of such deletion from the listing. The listings and any deletions from the listings will be mailed to, in the case of transporters, the most current address obtainable by the department from the State Liquor Authority or to an address subsequently provided in writing by the transporter to the department, and in the case of registered distributors, to the address provided in the application for registration or to an address subsequently provided in writing by the distributor to the department].

Section 3. Paragraph (2) of subdivision (e) of section 73.1 is amended to read as follows:

(2) A retail dealer or a vending machine owner or operator will not be in violation of the Tax Law or of this Part for failure to display or affix a registration certificate, if the retail dealer or vending machine owner or operator can establish that the department was notified within five days after the retail dealer or vending machine owner or operator first discovered any loss, mutilation or destruction of the original registration certificate, and that the replacement certificate was publicly displayed or affixed to the vending machine within 10 days after the date it was [mailed] *issued* by the department. When a retail dealer or vending machine owner or operator receives a replacement certificate, the records concerning the designation of registration certificates required by subdivision (b) of this section must be immediately amended to reflect such receipt.

Section 4. Subdivision (c) of section 417.2 is amended to read as follows:

(c) Where motor fuel is being imported for use, distribution, storage or sale in the State, the manifest must indicate the name of the person importing or causing such fuel to be imported. Such person's name must be contained in the current listing of registered distributors prepared by the department. The department will periodically [provide a current listing of the name and address of every registered distributor to each] *make available to all licensed importing [transporter] transporters*, licensed terminal

[operator] operators (see Part 418 of this Title) and registered [distributor. If the registration of a distributor is] distributors a current listing of every registered distributor. Additionally, the department will make available listings of distributors whose registration has been cancelled or suspended [ , the department will concurrently therewith notify all licensed terminal operators, licensed importing transporters and registered distributors of such deletion from the listing. The listing and any deletions from the listing will be mailed to the address provided in the application for license or registration or to an address subsequently provided in writing to the department].

**Text of proposed rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

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

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

#### Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 171, subdivision First; 436 (not subdivided); and 475 (not subdivided). Section 171, subdivision First, provides the Commissioner of Taxation and Finance with the authority to make reasonable rules and regulations that may be necessary for the exercise of his or her powers and performance of his or her duties under the Tax Law. Section 436 (not subdivided) of the Tax Law provides for the authority provided by section 171 to be exercisable specifically with respect to the alcoholic beverage tax imposed by Article 18 of the Tax Law. Section 475 (not subdivided) provides the same authority as it relates specifically to the administration of the cigarette excise tax imposed under Article 20 of the Tax Law.

2. Legislative objectives: The rule is being proposed pursuant to this authority to more efficiently provide taxpayers necessary information to comply with the Tax Law.

3. Needs and benefits: This rule eliminates references to the mailing by the Department of certain publications and documents found in the alcoholic beverage, cigarette and motor fuel tax regulations. This will allow the department to disseminate these documents by more efficient methods, such as the Internet and electronic mail, thereby reducing its printing and mailing costs. This rule is the result of recommendations of a Department working group looking to reduce the Department's printing and mailing costs. The group recommended the elimination of regulatory references to the Department mailing out listings of liquor and fuel distributors. In accordance with this recommendation, sections 68.4 and 417.2 of the regulations are amended to delete the reference to these mailings. In addition, references to mailing a special permit for liquors and a replacement cigarette or tobacco product retail dealer or vending machine registration are also eliminated to allow flexibility in the future.

#### 4. Costs:

(a) Costs to regulated parties: There is no cost to regulated parties for the implementation of and continuing compliance with the rule.

(b) Costs to the State and its local governments including this agency: This rule will not impose any costs on New York State or its local governments. The implementation and continued administration of this rule will not impose costs on the Department of Taxation and Finance. It is estimated that there will be \$8,600 savings for printing costs and \$54,000 savings for mailing costs on an annual basis attributable to not being required to print and mail these distributor lists.

(c) Information and methodology. This analysis is based on discussions among personnel from the Department's Office of Tax Policy Analysis, the Office of Counsel and the Office of Budget and Management Analysis, which examined the printing and mailing costs associated with mailing the distributor lists and updates.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule does not impose any reporting requirements, including forms or other paperwork.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: The alternative of not changing the rule with respect to printing and mailing the excise tax publications and documents to taxpayers would limit the Department's ability to take advantage of more efficient means of communication.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

10. Compliance schedule: This rule would become effective on the date that the Notice of Adoption regarding these amendments is published in the State Register.

#### Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because the rule will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The rule does not distinguish between different types and sizes of regulated parties.

The purpose of this rule is to eliminate references to the mailing of certain excise tax publications and documents by the department. This will allow the department to disseminate these documents by more efficient methods, such as the Internet and electronic mail, thereby reducing its printing and mailing costs.

#### Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. This rule does not distinguish between regulated parties located in different geographical areas.

The purpose of this rule is to eliminate references to the mailing of certain excise tax publications and documents by the department. This will allow the department to disseminate these documents by more efficient methods, such as the Internet and electronic mail, thereby reducing its printing and mailing costs.

#### Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no impact on jobs and employment opportunities.

The purpose of this rule is to eliminate references to the mailing of certain excise tax publications and documents by the department. This will allow the department to disseminate these documents by more efficient methods, such as the Internet and electronic mail, thereby reducing its printing and mailing costs.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Offers in Compromise

I.D. No. TAF-39-13-00008-P

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

**Proposed Action:** This rule is proposed pursuant to [SAPA § 207(3)], 5-Year Review of Existing Rules. Amendment of Parts 5000 and 5005; and repeal of section 7-4.5 of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subds. First, Fifteenth, and Eighteenth-a, 1096(a); and L. 2011, ch. 469

**Subject:** Offers in Compromise.

**Purpose:** To reflect the amendments made by chapter 469 of the Laws of 2011 and to define what constitutes undue economic hardship.

**Substance of proposed rule (Full text is posted at the following State website: [www.tax.ny.gov](http://www.tax.ny.gov)):** This rule amends the Compromises Regulations, as published in Chapter XIII of Title 20 NYCRR, in response to legislative changes enacted by Chapter 469 of the Laws of 2011.

Chapter 469 of the Laws of 2011 amended the Tax Law to expand the commissioner's authority to compromise liability to cover situations where collection in full would cause the taxpayer undue economic hardship. The legislation eliminated the requirement that the amount payable through an offer in compromise must be at least the amount recoverable through legal proceedings and provided instead that the amount payable through an offer in compromise is an amount that reasonably reflects collection potential or is otherwise justified by proofs offered by the taxpayer. The legislation also provided that no offer in compromise will be acceptable if it would undermine tax compliance by other taxpayers or be adverse to the interests of the State.

The purpose of this rule is to update the regulations to reflect these legislative changes and to define what constitutes undue economic hardship, as required by Chapter 469.

Section 1 of the rule repeals obsolete section 7-4.5 of the Business Corporation Franchise Regulations based on statutory amendments made by Chapter 469 of the Laws of 2011. In addition, this provision is unnecessary because offers in compromise for all taxpayers are governed by Chapter XIII.

Sections 2 amends section 5000.1 of the Compromises Regulations to provide that a tax or other imposition administered by the commissioner may be compromised if collection in full would cause an individual taxpayer undue economic hardship. The amendments reflect statutory changes made by Chapter 469 of the Laws of 2011, including deletion of an obsolete reference to article 2-E of the General City Law.

Sections 3 and 11 add new sections 5000.1(c) and 5005.1(b)(5), respectively, to reflect the statutory changes that an offer in compromise will not be accepted for any reason where acceptance of the offer would undermine voluntary compliance with the Tax Law or would not be in the best interests of the State.

Sections 4 and 12 amend sections 5000.3 and 5005.1, respectively, to delete obsolete requirements regarding payments, provide that forms are available on the department's Web site, and make other technical amendments.

Section 5 amends section 5000.4 to reflect the statutory change raising the threshold for requiring an opinion of counsel from \$25,000 to \$50,000 and to make other technical amendments.

Section 6 amends section 5000.5(b)(2) to provide for an offer in compromise based on undue economic hardship and to modify the minimum offer requirement to indicate that the amount acceptable in compromise must reasonably reflect collection potential. Reasonable collection potential is based on the total realizable value of the taxpayer's assets and the amount that could reasonably be expected to be collected from the taxpayer's anticipated future income. This section further explains how to value assets and future income.

Section 7 amends section 5005.1(a) to provide that other impositions administered by the commissioner, as well as taxes, may be compromised. The amendments reflect statutory changes made by Chapter 469 of the Laws of 2011.

Section 8 amends section 5005.1(b)(1) to provide for an offer in compromise based on undue economic hardship and to modify the minimum offer requirement to indicate that the amount acceptable in compromise must reasonably reflect collection potential. The amendments reflect statutory changes made by Chapter 469 of the Laws of 2011.

Section 9 adds new paragraph (3) to section 5005.1(b) to provide that being unable to pay reasonable basic living expenses constitutes undue economic hardship. The section further elaborates what expenses are considered basic living expenses, and other factors that support an undue economic hardship determination.

Section 10 amends renumbered section 5005.1(b)(4) to provide that reasonable collection potential is based on the total realizable value of the taxpayer's assets and the amount that could reasonably be expected to be collected from the taxpayer's anticipated future income. This section further explains how to value the assets and future income.

Section 13 amends section 5005.1(e)(2)(i) to add failure to show that collection in full would cause an individual taxpayer undue economic hardship to the reasons that the department may reject an offer in compromise, and clarifies that evidence of conveyance of assets for less than fair market value is another reason that the department may reject an offer in compromise if the conveyance is after the taxpayer has knowledge of the liability.

Section 14 amends section 5005.1(e)(3) to delete language related to obsolete procedures regarding the refunding of money paid on offers that have been withdrawn.

**Text of proposed rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

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

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

#### **Reasoned Justification for Modification of the Rule**

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 7, 2009, State Register a list of rules that were adopted by the Commissioner of Taxation and Finance in 1999 and 2004 and a notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. This information was also posted on the department's Web site (<http://www.tax.ny.gov/rulemaker/fiveyearrev2009.htm>) on December 30, 2008. Comments from the public concerning the continuation or modification of these rules were invited until February 23, 2009.

One of the 1999 rules included in this list added Part 5005 to the Compromises regulations, as published in Chapter XIII of Title 20 NYCRR. The rule, which codified the department's policy in relation to offers in compromise (OIC's) of fixed and finally determined tax liabilities, was adopted by the commissioner on June 15, 1999, and published in the State Register on June 30, 1999 (I.D.# TAF-17-99-00005-A).

As a result of the department's 2004 review, it was determined that modifications should be made because of statutory amendments that were enacted by Chapter 513 of the Laws of 2002. The rule was subsequently amended in 2005 to reflect these statutory amendments.

The Department of Taxation and Finance submitted for publication in

the Rule Review section of the January 6, 2010, issue of the State Register a list of rules that were adopted by the Commissioner of Taxation and Finance in 2000 and 2005, and a notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. On December 31, 2009, this information was also posted on the department's Web site (<http://www.tax.ny.gov/rulemaker/fiveyearrev2010.htm>). The public was invited to submit comments concerning the continuation or modification of these rules by February 22, 2010.

The 2005 rule, which amended 20 NYCRR Part 5000 (Compromises under Subdivision Eighteenth-A of Section 171 of the Tax Law) and Part 5005 (Compromises under Subdivision Fifteenth of Section 171 of the Tax Law) to reflect statutory amendments and existing department policy and to make other technical corrections concerning offers in compromise, was adopted September 16, 2005, and published in the State Register on October 5, 2005 (ID# TAF-30-05-00004-A).

As a result of its 2009 and 2010 reviews, the department has determined that some of the sections that were added in 1999 and amended in 2005 should not be continued without modification because of recent substantive statutory amendments.

The underlying statutory amendments were enacted by Chapter 469 of the Laws of 2011. Under Chapter 469, the Tax Department's Offer in Compromise Program is expanded to include individual taxpayers who can show that collection in full of any tax or other imposition administered by the Tax Department will cause undue economic hardship. The purpose of this rule is to update the regulations to reflect these statutory changes and to define what constitutes undue economic hardship, as required by Chapter 469.

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

A written comment was received regarding TAF-17-99-00005-A, which amended 20 NYCRR Part 5005 and was part of the listing of rules to be reviewed by the department in 2009, as published in the State Register on January 7, 2009.

The comment concerns allowing financially distressed taxpayers the opportunity to file an offer in compromise based on hardship, similar to the Internal Revenue Service. 20 NYCRR 5005 pertains to compromises under subdivision fifteenth of section 171 of the Tax Law. At the time the comment was received, subdivision fifteenth of section 171 specifically provided the amount payable in compromise could "in no event be less than the amount, if any, recoverable through legal proceedings". The Tax Law did not allow the acceptance of an offer in compromise based on hardship and a statutory amendment was first needed to allow the acceptance of an offer of an amount less than the amount recoverable through legal proceeding in the case of hardship.

The department sought legislation to allow the commissioner to accept offers in compromise where collection in full would cause undue economic hardship. As a result, Chapter 469 of the Laws of 2011 amended the Tax Law to eliminate the requirement that the amount payable through an offer in compromise must be at least the amount recoverable through legal proceedings and authorized the commissioner to compromise liability where a taxpayer shows that collection in full would cause the taxpayer undue economic hardship. The rule provides standards for what constitutes undue economic hardship for individuals to promote consistent application of the law. In addition, the rule removes obsolete and dated provisions, including the former provisions requiring an upfront payment of the full offer amount, or a deposit if the offer provides for future installment, upon submission of the offer.

#### **Regulatory Impact Statement**

1. Statutory authority: Tax Law, sections 171, subdivisions First, Fifteenth, and Eighteenth-a; and 1096(a); and L. 2011, ch 469. Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations consistent with law that may be necessary for the exercise of the commissioner's powers and the performance of the commissioner's duties under the Tax Law. Section 171, subdivision Fifteenth of the Tax Law authorizes the commissioner to compromise liability in certain circumstances. Chapter 469 of the Laws of 2011 amended subdivision Fifteenth to expand the commissioner's authority to compromise liability to cover situations where collection in full would cause the taxpayer undue economic hardship. As amended, subdivision Fifteenth further provides that the commissioner shall promulgate regulations defining what constitutes undue economic hardship. Section 171, subdivision Eighteenth-a, authorizes the commissioner to compromise liability prior to the time it is finally fixed, with such qualifications and limitations as may be established pursuant to rules and regulations. Section 1096(a) authorizes the commissioner to make such rules and regulations as are necessary to enforce the Franchise Tax on Business Corporations imposed by Article 9-A of the Tax Law.

2. Legislative objectives: The rule is being proposed to administer statu-

tory amendments made by Chapter 469 of the Laws of 2011 that expand the eligibility of taxpayers that can participate in the Tax Department's offer in compromise program to include individual taxpayers who can show that collection in full of any tax or other imposition administered by the Tax Department will cause the taxpayer undue economic hardship. The rule amends Parts 5000 and 5005 of the department's regulations relating to offers in compromise and delineates the circumstances that constitute undue economic hardship for individuals. The rule also repeals an outdated and unnecessary provision of the business corporation franchise tax regulations relating to offers in compromise.

3. Needs and benefits: Prior to amendment by Chapter 469 of the Laws of 2011, section 171, subdivision Fifteenth authorized the department to compromise liability in limited circumstances where the taxpayer was discharged in bankruptcy or insolvent. The amount payable in compromise could not be less than the amount that the department could recover through legal proceedings. These provisions restricted the department's ability to resolve overwhelming tax liabilities of taxpayers experiencing extreme economic hardship. The department sought legislation, which was enacted as Chapter 469, to allow the commissioner to accept offers in compromise that reasonably reflect collection potential and offers in compromise where collection in full would cause undue economic hardship. The statutory modifications allow the Tax Department to bring more distressed taxpayers into the offer in compromise program. The rule provides standards for what constitutes undue economic hardship to promote consistent application of the law. In addition, the rule removes obsolete and dated provisions, including provisions requiring an upfront payment of the full offer amount, or a deposit if the offer provides for future installments, upon submission of the offer. A draft of the rule was submitted to, among others, the Tax Section of the New York State Bar Association and the Committee on State and Local Taxation of the Association of the Bar of the City of New York. Both of these organizations, while making technical suggestions, indicated their support for the regulations. The Tax Section commended the department for the quality and content of the draft, noting that the amendments "incorporate the letter and spirit of the law." Similarly, the Committee on State and Local Taxation stated it was grateful that the department has recognized difficulties in the existing regulations and has taken steps to provide clearer guidance and broadly implement the public policy goals of the statutory amendments.

4. Costs:

(a) Costs to regulated persons: There are no costs imposed on regulated parties associated with the implementation and continued compliance with this rule.

(b) Costs to the State and its local governments including this agency: It is estimated that the implementation and continued administration of these amendments will not impose costs on the Department of Taxation and Finance. Additionally, there are no costs to New York State and its local governments for the implementation and continued administration of this rule. It should be noted however, that as a result of Chapter 469 of the Laws of 2011, increased staff time has been needed to process the increased number of offers.

(c) Information and methodology: These conclusions are based on analysis of the regulation and the statutory changes, and discussions with and information received from the department's Taxpayer Guidance Division, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Counsel, Collections and Civil Enforcement Division, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: These amendments do not impose any new paperwork or reporting requirements.

7. Duplication: These amendments do not duplicate any existing Federal or State requirements.

8. Alternatives: Statutory amendments required changes to the rule and a definition of what constitutes undue economic hardship. The rule generally conforms to similar federal provisions for compromising federal tax liability. An alternative would be not to look to federal definitions. It was determined that it was better to rely on well-established federal provisions where appropriate. Another alternative considered, based on a suggestion from the Tax Section of the NYS Bar association, would be to discount to present value the amount that could reasonably be expected to be collected from the taxpayer's anticipated future income for purposes of determining the amount acceptable in the case of a cash offer. The statute provides that the amount payable in compromise must reasonably reflect collection potential or be otherwise justified by proofs offered by the taxpayer. In determining reasonable collection potential, the rule limits the period of time that the department will look at future income generally to no more than ten years, unless there are circumstances indicating that a significant

recovery can reasonably be expected if a longer period is used. While the department may consider present value in evaluating an offer, it does not believe that the concept of reasonable collection potential should be adjusted in all cases where the offer is a cash offer. It is noted, however, that cash offers (amounts paid in 90 days or less), do not incur the additional interest that is imposed on installment payments, and that additional guidance was added as to the length of time that would generally be considered in determining the reasonable collection potential from anticipated future income.

9. Federal standards: The rule does not exceed any minimum standards of the Federal government for the same or similar subject areas. The rule was modeled, where appropriate, on the federal offer in compromise program for federal taxes.

10. Compliance schedule: No time is needed in order for regulated parties to comply with this rule. The amendments will take effect on the date the Notice of Adoption is published in the State Register.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirement on small businesses or local governments. Chapter 469 of the Laws of 2011 amended the Tax Law to expand the commissioner's authority to compromise liability to cover situations where collection in full would cause the taxpayer undue economic hardship. The legislation eliminated the requirement that the amount payable through an offer in compromise must be at least the amount recoverable through legal proceedings and provided instead that the amount payable through an offer in compromise is an amount that reasonably reflects collection potential or is otherwise justified by proofs offered by the taxpayer. The legislation also provided that no offer in compromise will be acceptable if it would undermine tax compliance by other taxpayers or be adverse to the interests of the State.

The purpose of this rule is to update the regulations to reflect these legislative changes and to define what constitutes undue economic hardship, as required by Chapter 469.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on any rural areas. Chapter 469 of the Laws of 2011 amended the Tax Law to expand the commissioner's authority to compromise liability to cover situations where collection in full would cause the taxpayer undue economic hardship. The legislation eliminated the requirement that the amount payable through an offer in compromise must be at least the amount recoverable through legal proceedings and provided instead that the amount payable through an offer in compromise is an amount that reasonably reflects collection potential or is otherwise justified by proofs offered by the taxpayer. The legislation also provided that no offer in compromise will be acceptable if it would undermine tax compliance by other taxpayers or be adverse to the interests of the State.

The purpose of this rule is to update the regulations to reflect these legislative changes and to define what constitutes undue economic hardship, as required by Chapter 469.

**Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no impact on jobs and employment opportunities. Chapter 469 of the Laws of 2011 amended the Tax Law to expand the commissioner's authority to compromise liability to cover situations where collection in full would cause the taxpayer undue economic hardship. The legislation eliminated the requirement that the amount payable through an offer in compromise must be at least the amount recoverable through legal proceedings and provided instead that the amount payable through an offer in compromise is an amount that reasonably reflects collection potential or is otherwise justified by proofs offered by the taxpayer. The legislation also provided that no offer in compromise will be acceptable if it would undermine tax compliance by other taxpayers or be adverse to the interests of the State.

The purpose of this rule is to update the regulations to reflect these legislative changes and to define what constitutes undue economic hardship, as required by Chapter 469.

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

**Service of Process on the Department**

**I.D. No.** TAF-39-13-00009-P

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

**Proposed Action:** Amendment of section 2391.3(a) of Title 20 NYCRR.

**Statutory authority:** Tax Law, section 171, subdivision First; Civil Practice Law and Rules, section 307

**Subject:** Service of process on the Department.

**Purpose:** Elimination of option to personally serve the department with process at its district offices.

**Text of proposed rule:** Pursuant to the authority contained in subdivision First of section 171 of the Tax Law, and section 307 of the Civil Practice Law and Rules, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Procedural Regulations as published in Chapter IX of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Subdivision (a) of section 2391.3 of such regulations is amended to read as follows:

(a) General. Any summons, complaint, notice of petition and petition, or any other pleading in relation to commencing any legal action or proceeding involving this department (except the Division of Tax Appeals or the Tax Appeals Tribunal) in any court of law may be served on the Commissioner of Taxation and Finance or any person designated by the commissioner to receive legal process. Personal service may be made at the principal office of the department (as noted in section 2391.2 of this Part) [, or at any Division of Taxation district office, but not the Capital Region District Office (the location of the Division of Taxation's district offices may be obtained by calling the department's tax information number)]. Selected personnel (including the receptionist on duty in the lobby) in the principal office have been designated to accept legal process on the commissioner's behalf, and such service may be made generally on weekdays from 8:30 a.m. to 5:00 p.m. [Further, selected personnel in each district office have also been designated to accept legal process on the commissioner's behalf.]

Section 2. These amendments shall take effect on the date that the Notice of Adoption is published in the *State Register*, and shall apply beginning the first day of the first month beginning more than 60 days after such date.

**Text of proposed rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

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

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

#### **Reasoned Justification for Modification of the Rule**

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 4, 2012, issue of the *State Register* summaries of rules that were adopted by the Commissioner of Taxation and Finance in 1997, 2002 and 2007, as notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. On December 29, 2011, this information was also posted on the department's web site. The public was invited to submit comments concerning the continuation or modification of these rules by February 21, 2012. The Rule Review included a 1997 rule adding Part 2391.

Part 2391, relating to service of process on the department, was added to the Procedural Regulations, as published in Chapter IX of 20 NYCRR, on November 5, 1997. No public comments were received by the department with respect to its 2002, 2007, or 2012 5-year reviews of this rule. As a result the 2002 review of the rule, a Rule Review notice indicating that it would be continued without modification was published in the *State Register* on June 19, 2002. Following the department's 2007 review of the rule, a Rule Review notice indicating that it would again be continued without modification was published in the *State Register* on April 18, 2007.

The current rule amends section 2391.3(a) of 20 NYCRR to eliminate the option of serving the department with process at district offices. The purpose of the proposed amendments is to make it possible for the department to streamline departmental operations by discontinuing all walk-in services currently available at district offices, including receipt of process.

Currently, district office staff must divert their attention from their ongoing job responsibilities to receive the service, sign all the documents, and then ship the documents to Albany. This process is time-consuming and inefficient for the department. The department has eliminated many services available at its district offices, in favor of providing the services online and by telephone and mail. This amendment advances this process. These amendments continue to provide for personal service on the department at its principal office, or by first class or certified mail, pursuant to sections 307 and 312-a of the Civil Practice Law and Rules. Parties will thus continue to have an option of serving the department without having to travel to its principal office in Albany.

#### **Regulatory Impact Statement**

1. Statutory authority: Tax Law, section 171, Subdivision First generally authorizes the Commissioner of Taxation and Finance to promulgate regulations relating to administration of the Tax Law. Section 307 of the Civil Practice Law and Rules provides for the designation by a chief executive officer of a State agency of persons authorized to receive service of process on his or her behalf or on behalf of the agency.

2. Legislative objectives: This proposed rule amends 20 NYCRR 2391.3(a) to reduce the number of persons authorized to receive process on behalf of the Commissioner or the Department of Taxation and Finance by eliminating receipt of process at district offices.

3. Needs and benefits: The purpose of this amendment is to make it possible for the Department to streamline departmental operations by discontinuing all walk-in services currently available at district offices, including receipt of process. Currently, district office staff must divert their attention from their ongoing job responsibilities to receive the service, sign all the documents, and then ship the documents to Albany. This process is time-consuming and inefficient for the Department. The Department has eliminated many services available at its district offices, in favor of providing the services online and by telephone and mail. This amendment advances this process by eliminating the option of serving process at the district offices. The Department currently has eight district offices located throughout the State at which process can be served. Approximately 2,650 summonses were served on the Department at district offices in 2012. Parenthetically, the Department notes that most of these summonses were associated with foreclosure actions by banking institutions where the Department was a necessary party under section 1311 of the Real Property Actions and Proceedings Law. The number of these actions fluctuates with changing trends in mortgage foreclosure filings. This amendment continues to provide for personal service on the Department at its principal office, or by first class or certified mail, pursuant to sections 307 and 312-a of the Civil Practice Law and Rules. Parties will thus continue to have an option of serving the Department without having to travel to its principal office in Albany.

#### 4. Costs:

(a) Costs to regulated persons: It is estimated that any costs to regulated parties attributable to completing service at a post office instead of a district office would be minimal. The cost of serving process by either certified or first class mail is estimated to be less than \$8.00, based on the highest projected cost for mail weighing up to 13 ounces. This cost may be offset by the savings many regulated parties will realize in spending less time and traveling shorter distances to complete service at the nearest post office rather than a district office.

(b) Costs to the agency and to the State and local governments including this agency: It is estimated that the implementation and continued administration of this rule will not impose any costs upon this agency, New York State, or its local governments. Rather, the rule allows the Department to more efficiently deploy its resources. By eliminating this interruptive, time-consuming, and inefficient process, the Department can better utilize its resources.

(c) Information and methodology: This costs assessment is based on a review of the rule and its effect as described above and discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis, and Office of Budget and Management Analysis.

5. Local government mandates: The implementation and continued administration of this rule will not impose any mandates upon local governments.

6. Paperwork: This rule will not require any new forms or information.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: The Department considered continuing to permit personal service at its district offices, but determined that eliminating this option would place a minimal burden on regulated parties and allow the Department to move forward with an initiative to eliminate walk-in services at its district offices. The amendments will apply the first day of a month beginning more than 60 days after the Notice of Adoption is published in the *State Register* so that parties will have an opportunity to adjust their practices. The Division notified a number of business and industry organizations of this determination, including the New York State Bar Association Tax Section, the Association of the Bar of the City of New York, the New York Society of Certified Public Accountants, and the National Tax Committee for the National Conference of CPA practitioners. No comments were received. Additionally, it is intended that a notice advising taxpayers of the change will be posted on the Division's website and in each of its district offices.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

10. Compliance schedule: The amendment shall apply on the first of the month next succeeding 60 days after the Notice of Adoption is published in the *State Register*.

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

A Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis, and Job Impact Statement are not being submitted with this rule because this rule will not impose any adverse economic impact on small businesses or local governments, or on public or private entities in rural areas, nor any additional reporting, recordkeeping, or other compliance requirements on these entities. Further, it is evident from the subject matter of the rule that it will have no adverse impact on jobs and employment opportunities.

This rule amends section 2391.3(a) of 20 NYCRR to eliminate the option of personally serving the Department with legal process at its district offices. Taxpayers will retain the options of serving the Department personally at its principal office in Albany, NY, or by first class or certified mail.

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## Workers' Compensation Board

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### EMERGENCY RULE MAKING

#### Filing Written Reports of Independent Medical Examinations (IMEs)

**I.D. No.** WCB-39-13-00001-E

**Filing No.** 874

**Filing Date:** 2013-09-04

**Effective Date:** 2013-09-04

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

**Action taken:** Amendment of section 300.2(d)(11) of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 117 and 137

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

**Specific reasons underlying the finding of necessity:** This amendment is adopted as an emergency measure because time is of the essence. Memorandum of Decisions issued by Panels of three members of the Workers' Compensation Board (Board) have interpreted the current regulation as requiring reports of independent medical examinations be received by the Board within ten calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the Board is not open on legal holidays, Saturdays and Sundays to receive the report, and the U.S. Postal Service is not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is not accepted into evidence and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the Board, the workers' compensation insurance carrier/self-insured employer, the claimant's treating provider, the claimant's representative and the claimant it is not possible to send the report by facsimile or electronic means. The Decisions have greatly, negatively impacted the professionals who conduct independent medical examinations and the entities that arrange and facilitate these exams, as well as the workers' compensation insurance carriers and self-insured employers. When untimely reports are not accepted into evidence, the insurance carriers and self-insured employers are prevented from adequately defending their position in a workers' compensation claim. Accordingly, emergency adoption of this rule is necessary.

**Subject:** Filing written reports of Independent Medical Examinations (IMEs).

**Purpose:** To amend the time for filing written reports of IMEs with the Board and furnished to all others.

**Text of emergency rule:** Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 2, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 328 State Street, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

#### Regulatory Impact Statement

##### 1. Regulatory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

##### 2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

##### 3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

#### 4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

#### 5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

#### 6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

#### 7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

#### 8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all requests for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

#### 9. Federal standards:

There are no federal standards applicable to this proposed rule.

#### 10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

### **Regulatory Flexibility Analysis**

#### 1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. Any independent medical exams conducted at their request must be filed by the physician, chiropractor, psychologist or podiatrist conducting the exam or by an independent medical examination (IME) entity. Workers' Compensation Law § 137 (1)(a) does not permit self-insured employers or insurance carriers to file these reports, therefore there is no direct action a self-insured local government must or can take with respect to this rule. However, self-insured local governments are concerned about the timely filing of an IME report as one filed late will not be admissible as evidence in a workers' compensation proceeding. This rule makes it easier for a report to be timely filed as it expands the timeframe from 10 calendar days to 10 business days. Small businesses that are self-insured will also be affected by this rule in the same manner as self-insured local governments.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten busi-

ness days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

#### 2. Compliance requirements:

This rule requires the filing of IME reports within 10 business days rather than 10 calendar days. Prior to this rule medical providers authorized to conduct IMEs and IME entities hired to perform administrative functions for IME examiners, such as filing the report with the Board, had less time to file such reports. Self-insured local governments and small employers, who are not authorized or registered with the Chair to perform IMEs or related administrative services, are not required to take any action to comply with this rule. As noted above, WCL § 137(1)(a) does not permit self-insured employers or insurance carriers to file IME reports with the Board. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

#### 3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

#### 4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

#### 5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

#### 6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

#### 7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

### **Rural Area Flexibility Analysis**

#### 1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

#### 2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

#### 3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

#### 4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

#### 5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

### **Job Impact Statement**

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.