

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Movement of Elk and Deer

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

Filing No. 844

Filing Date: 2013-08-20

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 Part 68 of Title 1 NYCRR.

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

Subject: Movement of elk and deer.

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

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rule: Part 68.1 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new section 68.1 is added to read as follows:

68.1 Definitions. For the purposes of this Part:

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

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

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

(d) "CWD negative cervid" means a cervid that has had an official

CWD test conducted by a laboratory certified by USDA/APHIS that resulted in a "not detected" or negative classification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(t) "Owner" means an individual, partnership, company, corporation or other legal entity that has legal title to an animal or herd of animals.

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

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

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

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

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

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

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

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

(2) The CVI shall include:

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

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

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

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

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

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

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

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

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

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

68.4 CWD Certified Herd Program.

(a) For purposes of enforcement of article 5 of the Agriculture and Markets Law, and except where in conflict with the statutes of this State or with rules and regulations promulgated by the commissioner, the Commissioner hereby adopts the current federal regulation in sections 55.21 through 55.25 in subpart b of part b of title 9 of the Code of Federal Regulations (revised January 1, 2013; U.S. Government Printing Office, Washington, DC 20402) at pages 197 through 202 entitled Chronic Wasting Disease Herd Certification Program.

(b) Copies of this regulation, as published in the Code of Federal Regulations are maintained in a file at the Department of Agriculture and Markets, Division of Animal Industry, 10B Airline Drive, Albany, NY 12235, and are available for public inspection and copying during regular business hours.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 68.4(a).

Text of rule and any required statements and analyses may be obtained from: Dr. David Smith, DVM, Director, Division of Animal Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502, email: david.smith@agriculture.ny.gov

Revised Job Impact Statement

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

State and County Fairs

I.D. No. AAM-23-13-00009-A

Filing No. 838

Filing Date: 2013-08-15

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 Part 351 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6), 31-b, 72(3) and 74(9)

Subject: State and county fairs.

Purpose: To require animal identification consistent with federal requirements; clarify and ease current regulatory requirements.

Text or summary was published in the June 5, 2013 issue of the Register, I.D. No. AAM-23-13-00009-P.

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

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

Comment: The Department received a comment from the New York State Association of Agricultural Fairs, Inc., expressing support for the proposed amendments.

Response: The Department concurs.

NOTICE OF ADOPTION

Standards for Petroleum Products

I.D. No. AAM-26-13-00004-A

Filing No. 845

Filing Date: 2013-08-20

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 224.3(a) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179(3)(b)

Subject: Standards for petroleum products.

Purpose: To ensure that specifications and test procedures for petroleum products meet current requirements issued by ASTM.

Text or summary was published in the June 26, 2013 issue of the Register, I.D. No. AAM-26-13-00004-EP.

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

Text of rule and any required statements and analyses may be obtained from: Michael Sikula, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3146, email: mike.sikula@agriculture.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.

Department of Environmental Conservation

NOTICE OF ADOPTION

Transportation Conformity

I.D. No. ENV-16-13-00001-A

Filing No. 837

Filing Date: 2013-08-14

Effective Date: 30 days after filing

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

Action taken: Repeal of Part 240; addition of new Part 240; and amendment of Part 200 of Title 6 NYCRR.

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

Subject: Transportation Conformity.

Purpose: Streamline the rule and conform to Federal requirements.

Substance of final rule: Part 240 establishes the New York State Transportation Conformity requirements. The Department's Transportation Conformity regulations comply with the streamlined conformity SIP requirements contained in EPA's final regulation as well as meet the requirement to update its regulations to comport with the federal regulations within one year of promulgation.

Part 240 establishes the consultation process for involved agencies to address the federal requirements for transportation conformity codified in 40 CFR Part 93. In general, Part 240 provides involved agencies (the Department, New York State Department of Transportation (NYSDOT), Environmental Protection Agency (EPA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and affected Municipal Planning Organizations (MPOs)) with reasonable opportunity for consultation throughout the process of determining conformity for MPO long range transportation plans and transportation improvement programs (TIPs).

The communication provisions of Part 240 include communications requirements necessary to fully engage involved agencies in the development of the applicable transportation plans, TIPs, program of transportation projects and state implementation plan (SIP) revisions. This includes the minimum timeframe to convene meetings between technical representatives of at least every 180 days for MPO transportation plan, MPO TIP conformity determinations and proposed SIP revisions. For policy level representatives the minimum timeframe requires that meetings should occur at least once annually.

Part 240 includes requirements for transmittal of lists to involved agencies, of all expected SIP revisions and actions requiring a conformity determination for that calendar year. It also includes the requirement that all involved agencies provide the names and addresses of agency offices and officers to which all correspondence in furtherance of Part 240 is to be directed.

The draft document provisions require that the lead conformity agency and the department shall provide the other involved agencies with relevant draft documents such as transportation plans, TIPs, SIP revisions, regional emissions analyses, and other drafts to be utilized for conformity determinations. These provisions require the lead conformity agency or the department to share the draft documents 30 days prior to the beginning of the public comment period, where possible and allow for no less than 30 days, or an adequate amount of time as determined in consultation to submit written comments.

The regulation outlines the consultation obligations and procedures for the department, NYSDOT and affected MPOs. The following general duties apply:

The department shall cooperatively develop, with NYSDOT and the affected MPOs, a list of Transportation Control Measures (TCMs) for potential inclusion in the applicable SIP revision; consult on the air quality parameters used to make conformity determinations to ensure that such parameters are consistent with air quality modeling performed for applicable SIP revision purposes; consult with NYSDOT and affected MPOs with respect to the traffic data and parameters used for emissions forecasting and determining conformity of transportation plans and TIPs; provide guidance, expertise, and assistance to other involved agencies on the applicable SIP revision; and convene, as necessary, meetings among technical staff of participating agencies.

NYSDOT shall coordinate the review of MPO draft transportation plans and MPO draft TIP conformity determinations and administer the formal submittal of the MPO transportation plan and MPO TIP; coordinate the review of the program of transportation projects in nonattainment or maintenance areas outside MPO boundaries and administer the formal submittal; review, in consultation with the department, emission estimation procedures and traffic data and parameters employed by affected MPOs in making conformity determinations for consistency with the applicable SIP revision; cooperatively develop, with the department and affected MPOs, a list of TCMs for potential inclusion in the applicable SIP revision; develop a public involvement process which provides opportunity for public review and comment on conformity determinations for transportation programs; provide guidance, expertise, and assistance to affected MPOs and local transportation agencies; in cooperation with affected MPOs, provide transportation data and transportation related parameters to the department for calculation of mobile source emissions; maintain the list of all conformity contacts; and convene, as necessary, meetings among appropriate staff to facilitate review.

The affected MPOs shall develop metropolitan area transportation plan and TIP conformity determinations; develop a public involvement process which provides opportunity for public review and comment on conformity determinations; cooperatively develop, with NYSDOT and the department, a list of TCMs for potential inclusion in the applicable SIP revision; document consideration of all significant comments received from involved agencies with respect to conformity determinations; in consultation with NYSDOT and the department, involve local transportation planning and local air agencies as required; in consultation with NYSDOT, the department, EPA, FHWA and FTA, provide the proposed list of exempt and non-exempt projects, proposed list of regionally significant projects and pertinent supporting documentation as required in an agreed upon format.

In order to meet the consultation obligations involved agencies shall establish a meeting schedule at the beginning of each calendar year.

Part 240 contains provisions for development and application of Transportation Control Measures (TCMs) and emissions budgets in the applicable SIP revision. NYSDOT and the affected MPOs, in consultation with the department, shall develop a list of TCMs for potential inclusion in the applicable SIP revision. The TCMs designated shall be specifically identified in the applicable SIP revision. The department shall develop any proposed motor vehicle emissions budget in consultation with involved agencies and provide such proposed budget to NYSDOT and the affected MPOs for review and comment at least 30 days, or an adequate amount of time as determined through consultation with involved agencies, prior to the submittal of the motor vehicle emissions budget to EPA for inclusion in the applicable SIP revision. If there is not agreement on which TCMS or on the proposed motor vehicle emissions budget to include in the state air quality implementation plan, the matter shall be resolved in accordance with the conflict resolution procedures in the regulations.

The model evaluation and selection procedures in Part 240 require NYSDOT to consult with involved agencies to select the air quality model inputs and to consult with the department, FHWA/FTA, and EPA to select the air quality models and parameters to use; require the affected MPOs and NYSDOT to develop procedures for transportation models and transportation inputs and parameters in consultation with the department, affected local air and transportation agencies, FHWA/FTA, and EPA; and provide for the department to select air quality models and develop non-transportation related inputs and parameters used to develop the emissions budget in the applicable SIP revision during the SIP revision process in consultation with involved agencies.

Part 240 contains provisions for determining regional significance and significant project changes. The affected MPOs and NYSDOT shall, in consultation with the department, determine which transportation projects, other than exempt projects, constitute regionally significant projects. Where the regional significance of a project is in question, the regulation contains criteria that shall be considered by the involved agencies to evaluate whether the project is regionally significant. There are also procedures for the evaluation of certain exempt projects that require the affected MPOs and NYSDOT, in consultation with the department, to determine which exempt projects should be treated as non-exempt due to significant emissions impacts.

The provisions in Part 240 for timely TCM implementation require that NYSDOT, the department, and the affected MPOs shall cooperatively determine whether TCMs are being implemented as scheduled; whether State and local agencies with the appropriate authority are giving maximum priority to approving or funding of TCMs; and whether delays in implementing TCMs specifically identified in the applicable SIP necessitate revision of the SIP. The procedures for projects in PM10 and/or PM2.5 nonattainment area require that the lead conformity agency determine if projects located in PM10 and/or PM2.5 nonattainment areas

require a quantitative PM10 and/or PM2.5 hot-spot analysis in accordance with 40 CFR 93.123(b)(1).

The procedures for notification of MPO transportation plan or MPO TIP amendments in Part 240 require each affected MPO to determine, in consultation with NYSDOT, whether MPO TIP or MPO transportation plan amendments solely concern the addition or deletion of exempt projects. NYSDOT shall make the determination for projects outside MPO boundaries in nonattainment or maintenance areas. The department, NYSDOT, USDOT, EPA and, as appropriate, affected local air and transportation agencies shall be notified in writing of any determinations within 30 days of such determination.

Part 240 includes procedures for events triggering new conformity determinations that require NYSDOT, in consultation with the department and affected MPOs, to identify instances when new conformity determinations are required. When transportation activities cross MPO or nonattainment areas boundaries, NYSDOT, in consultation with the department and affected MPOs, shall coordinate emissions analyses. For nonattainment or maintenance areas not entirely included in a single MPO boundary, NYSDOT shall coordinate the preparation of conformity determinations and air quality analyses and it shall make air quality analyses in nonattainment or maintenance areas that do not include any MPO boundaries. The results of any regional emissions analysis outside the MPO boundary shall be coupled with the MPO analysis for the remainder of the nonattainment or maintenance area, as appropriate, to allow a conformity determination based on the entire nonattainment or maintenance area. If more than one MPO is within the same nonattainment or maintenance area, NYSDOT shall coordinate the preparation of the conformity determinations. In isolated rural nonattainment and maintenance areas, NYSDOT shall coordinate the preparation of conformity determinations and air quality analyses as determined through consultation with all involved agencies.

For regionally significant projects that are not FHWA/FTA projects, Part 240 requires the affected MPOs and NYSDOT to work with the department to identify the projects so that proper project information is included in the regional emissions analysis. If during the public participation process, or interagency consultation process, other regionally significant projects are identified, or there are changes in the design concept and scope of a regionally significant project that would affect the air quality analysis, the NYSDOT or affected MPO shall appropriately refine the conformity analysis in accordance with the provisions of this section.

The criteria and procedures for localized CO, PM10, and PM2.5 violations (hot-spots) applies at all times. The FHWA/FTA or regionally significant project must not cause or contribute to any new localized CO, PM10, and/or PM2.5 violations, increase the frequency or severity of any existing CO, PM10, and/or PM2.5 violations, or delay timely attainment of any NAAQS or any required interim emission reductions or other milestones in CO, PM10, and PM2.5 nonattainment and maintenance areas. This criterion is satisfied without a hot-spot analysis in PM10, and PM2.5 nonattainment and maintenance areas for FHWA/FTA or regionally significant projects that are not identified in 40 CFR 93.123(b)(1). This criterion is satisfied for all other FHWA/FTA or regionally significant projects in CO, PM10, and PM2.5 nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project and the project has been included in a regional emissions analysis. For CO nonattainment each FHWA/FTA or regionally significant project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

In order to comply with the criteria and procedures for PM10 and PM2.5 control measures in Part 240, the regionally significant project must comply with any PM10 and PM2.5 control measures in the applicable implementation plan. The project-level conformity determination must contain a written commitment from the project sponsor to include those control measures that are contained in the applicable implementation plan.

Under Part 240, the affected MPOs shall consult with NYSDOT, the department, and affected local air and transportation agencies before formally adopting initiatives related to research and data collection efforts in support of regional transportation model development. They must also provide a final copy of the MPO transportation plans, MPO TIPs and associated MPO transportation plan and MPO TIP conformity determinations with pertinent supporting materials to involved agencies. NYSDOT shall provide a final copy of program of transportation projects conformity determinations with pertinent supporting materials for nonattainment or maintenance areas outside MPO boundaries to the involved agencies and the department shall provide a final copy of all applicable SIP revisions and pertinent supporting materials to involved agencies.

In the event that the involved agencies are unable to reach agreement on any matter set forth in Part 240, the unresolved issue or issues shall be referred to the commissioners of the department and NYSDOT for resolution. For conformity determinations for MPO transportation plans, MPO TIPs, and programs of transportation projects in areas outside any MPO each lead conformity agency making conformity determinations for a MPO transportation plan, MPO TIP, or program of transportation projects in a nonattainment or maintenance area outside any MPO shall provide the department and any affected local air agency with the proposed conformity determination accompanied by pertinent supporting documentation. Upon closing of the consultation period provided for the department shall have fourteen calendar days from receipt of such transmittal to appeal to the Governor as provided for in this section. For TCMs and motor vehicle emissions budgets in the State Implementation Plan the department shall provide NYSDOT with any proposed revision to the SIP which contains any TCMs or motor vehicle emissions budgets. In the event that NYSDOT and the Department are unable to concur on the appropriate TCMs or motor vehicle emissions budgets for inclusion in the applicable SIP revision, NYSDOT shall have 14 calendar days from the receipt of notification from the department that concurrence has not been reached to appeal to the Governor.

The department or NYSDOT may invoke the conflict resolution procedure by delivering to the Governor or Governor's designee, the Commissioner of NYSDOT or the department, and the conformity contacts, a letter requesting that the Governor exercise his or her discretion under Part 240. In event that the department or NYSDOT invokes the conflict resolution procedure, the final conformity determination must have the concurrence of the Governor or Governor's designee. If the department or NYSDOT do not appeal to the Governor within the specified 14 days, the affected MPO or NYSDOT may proceed with the final conformity determination or the department may proceed with its SIP revision.

Part 240 contains public participation procedures that conformity determinations for MPO transportation plans and MPO TIPs follow the specific public involvement process which provides opportunity for public review and comment prior to formal action on a conformity determination for all MPO transportation plans and MPO TIPs. Reasonable public access to technical and policy information considered by the affected agencies making the conformity determination must be provided at the beginning of the public review period. Conformity determinations must specifically address, in writing, all significant public comments claiming that known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a MPO transportation plan or MPO TIP. Conformity determinations in isolated rural nonattainment and maintenance areas and rural portions of nonattainment and maintenance areas outside MPO boundaries shall follow the specific public involvement process established by NYSDOT which provides opportunity for public review and comment prior to formal action to update the statewide transportation improvement program (STIP) and the statewide transportation plan. Public involvement in conformity determinations for transportation projects shall also be provided where otherwise required by law and copy fees shall be assessed in accordance with the access to records policy, rule or regulation of the involved agency responsible for the creation of the applicable record.

For regionally significant projects not from a conforming plan or TIP, Part 240 requires that the conformity determination applicable to such project shall be made in accordance with Table 1 of 40 CFR 93.109(b). In the event that the conformity determination or regional emissions analysis for a regionally significant project not from a conforming MPO transportation plan or MPO TIP is made using inputs or assumptions different from those identified in paragraphs 240-2.8(a)(2), (3) and (4) of Part 240, subdivision 240-11(c) shall apply. As required, NYSDOT and other involved agencies making conformity determinations or regional emissions analyses shall provide the department, prior to the issuance of a draft environmental document, an opportunity to review and comment on the air quality model inputs and parameters used in the regional emissions analysis, transportation model inputs, and parameters associated with the project, and non-transportation inputs and parameters necessary to evaluate the air quality impacts and analysis of a regionally significant project not from a conforming MPO transportation plan or MPO TIP. The opportunity to review and comment provided for in this subdivision shall not extend beyond the issuance of a final environmental document issued pursuant to the SEQR or NEPA, whichever may be applicable.

Part 240 also requires that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and must demonstrate assurance that they will be fulfilled. Written commitments to mitigation measures must also be obtained prior to a positive conformity determination, and the project sponsors must comply with such commitments.

Part 200 cites the portions of Federal statute and regulations that are incorporated by reference into Part 240.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 200.9.

Text of rule and any required statements and analyses may be obtained from: Michael Sheehan, PE, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8396, email: airregs@gw.dec.state.ny.us

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

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

No changes were made to previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

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

I.D. No. DFS-36-13-00003-E

Filing No. 843

Filing Date: 2013-08-19

Effective Date: 2013-08-20

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

Action taken: Addition of Part 420 and Supervisory Procedure MB 107, and repeal of Supervisory Procedure MB 108 of Title 3 NYCRR.

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

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

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

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

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

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

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

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

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

Substance of emergency rule: Section 420.1 summarizes the scope and application of Part 420. It notes that all individuals unless exempt must be licensed under Article 12-E to engage in mortgage loan originator

("MLO") activities. It also sets forth the basic authority of the Superintendent to revoke or suspend a license.

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

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

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

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

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

Section 420.7 describes the circumstances when an MLO license is inactive and how an MLO may maintain his or her license during such periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 107.2 contains general information about applications for initial licensing and annual license renewal as an MLO. It states that a sample of

the application form (which must be completed online) may be found on the Department's website and includes the address where certain information required in connection with the application for licensing must be mailed.

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

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

Section 107.5 covers inactive status.

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

Supervisory Procedure MB 108 is hereby repealed.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 16, 2013.

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

Regulatory Impact Statement

1. Statutory authority.

Revised Article 12-E of the Banking Law became effective on July 11, 2009 when Governor Paterson signed into law Chapter 123 of the Laws of 2009. The revised version of Article 12-E is modeled on the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act") pertaining to the regulation of mortgage loan originators. Hence, the licensing and regulation of mortgage loan regulators in New York now closely tracks the federal standard.

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

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

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

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

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

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

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

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

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

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

Section 599-o sets forth the authority of the Superintendent to adopt rules and regulations implementing Article 12-E, including the authority to adopt expedited review and licensing procedures for individuals previously authorized under the prior version of Article 12-E to act as MLOs. It also authorizes the Superintendent to investigate licensees and the entities with which they are associated.

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

2. Legislative objectives.

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

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

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

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

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

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

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

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

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

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

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

Article 12-E. Accordingly, Supervisory Procedure MB 108 is being rescinded.

3. Needs and benefits.

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

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

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

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

4. Costs.

MLOs are already experiencing increased costs as a result of the fees and continuing education requirements associated with the prior version of Article 12-E. These costs will continue under the new law and regulations.

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

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

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

5. Local government mandates.

None.

6. Paperwork.

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

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

7. Duplication.

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

8. Alternatives.

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

9. Federal standards.

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

10. Compliance schedule.

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

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

in advance of these dates under the regulations in order to allow the Department to complete their processing.

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

3. Professional Services:

None.

4. Compliance Costs:

As under the existing Part 420, some mortgage entities may choose to pay for costs associated with initial licensing and annual license renewal for their MLOs and with continuing education requirements, but are not required to do so. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education are expected to be minimal.

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

See response to Item 6 above.

Rural Area Flexibility Analysis

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

Compliance Requirements. Mortgage loan originators in rural areas must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks) to engage in the business of mortgage loan origination. The application process established by the regulations requires an MLO to apply for a license electronically and to submit additional background information to the Mortgage Banking unit of the Department. This additional information consists of fingerprints, a recent credit report, supplementary background information and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for cause, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. The Department believes that this

rule will not impose a burdensome set of requirements on entities operating in rural areas.

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

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

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

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

Job Impact Statement

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

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minimum Standards for the New York State Partnership for Long-Term Care Program

I.D. No. DFS-36-13-00001-P

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

Proposed Action: Amendment of Part 39 (Regulation 144) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1117, 3201, 3217, 3221, 3229, 4235, 4237 and art. 43; and Social Services Law, section 367-f

Subject: Minimum Standards for the New York State Partnership for Long-Term Care Program.

Purpose: To amend the minimum daily benefit amounts for 2014 through 2023 for the New York State Partnership for Long-Term Care Program.

Text of proposed rule:

Paragraph 1 of subdivision (b) of section 39.3 is hereby amended to read as follows:

(1) Nursing home care. Nursing home care coverage shall be provided for not less than a lifetime maximum total of 36 months for each covered person. A covered person must be permitted to substitute home care benefits for nursing home care benefits on the basis of two home care days for one nursing home day. Coverage of nursing home care shall consist of payment for skilled nursing care, intermediate care, and custodial care in nursing homes of at least \$[171] 274 per day. Payment for nursing home care services may be limited to services rendered in a nursing home licensed by the jurisdiction in which it is located. The minimum nursing home daily benefit shall be increased each year on the first day of January beginning in [2005] 2015. Policies/certificates sold after January 1, [2005] 2015 shall provide benefits at the increased minimum standard in the year sold. Minimum daily benefits for the next 10 years shall be as follows:

- (i) January 1, [2004] 2014 - \$[171] 274 (nursing home), \$[86] 137 (home care - 50 percent);
- (ii) January 1, [2005] 2015 - \$[180] 284 (nursing home), \$[90] 142 (home care - 50 percent);
- (iii) January 1, [2006] 2016 - \$[189] 294 (nursing home), \$[95] 147 (home care - 50 percent);
- (iv) January 1, [2007] 2017 - \$[198] 304 (nursing home), \$[99] 152 (home care - 50 percent);
- (v) January 1, [2008] 2018 - \$[208] 315 (nursing home), \$[104] 157 (home care - 50 percent);
- (vi) January 1, [2009] 2019 - \$[218] 326 (nursing home), \$[109] 163 (home care - 50 percent);
- (vii) January 1, [2010] 2020 - \$[229] 337 (nursing home), \$[115] 168 (home care - 50 percent);
- (viii) January 1, [2011] 2021 - \$[241] 349 (nursing home), \$[121] 174 (home care - 50 percent);
- (ix) January 1, [2012] 2022 - \$[253] 361 (nursing home), \$[127] 180 (home care - 50 percent);
- (x) January 1, [2013] 2023 - \$[265] 374 (nursing home), \$[133] 187 (home care - 50 percent).

Paragraph 1 of subdivision (b) of section 39.4 is hereby amended to read as follows:

(1) Nursing home care. Nursing home care coverage shall be provided for not less than a lifetime maximum total of 18 months for each covered person. A covered person must be permitted to substitute home care benefits for nursing home care benefits on the basis of two home care days for one nursing home day. Coverage of nursing home care shall consist of payment for skilled nursing care, intermediate care, and custodial care in nursing homes of at least \$[171] 274 per day. Payment for nursing home care services may be limited to services rendered in a nursing home licensed by the jurisdiction in which it is located. The minimum nursing home daily benefit shall be increased each year on the first day of January beginning in [2005] 2015. Policies/certificates sold after January 1, [2005] 2015 shall provide benefits at the increased minimum standard in the year sold. Minimum daily benefits for the next 10 years shall be as follows:

- (i) January 1, [2004] 2014 - \$[171] 274 (nursing home), \$[86] 137 (home care - 50 percent);
- (ii) January 1, [2005] 2015 - \$[180] 284 (nursing home), \$[90] 142 (home care - 50 percent);
- (iii) January 1, [2006] 2016 - \$[189] 294 (nursing home), \$[95] 147 (home care - 50 percent);

(iv) January 1, [2007] 2017 - \$[198] 304 (nursing home), \$[99] 152 (home care - 50 percent);
 (v) January 1, [2008] 2018 - \$[208] 315 (nursing home), \$[104] 157 (home care - 50 percent);
 (vi) January 1, [2009] 2019 - \$[218] 326 (nursing home), \$[109] 163 (home care - 50 percent);
 (vii) January 1, [2010] 2020 - \$[229] 337 (nursing home), \$[115] 168 (home care - 50 percent);
 (viii) January 1, [2011] 2021 - \$[241] 349 (nursing home), \$[121] 174 (home care - 50 percent);
 (ix) January 1, [2012] 2022 - \$[253] 361 (nursing home), \$[127] 180 (home care - 50 percent);
 (x) January 1, [2013] 2023 - \$[265] 374 (nursing home), \$[133] 187 (home care - 50 percent).

Paragraph 1 of subdivision (b) of section 39.5 is hereby amended to read as follows:

(1) The policy/certificate shall provide at least a lifetime maximum total of 48 months coverage for each covered person. The policy/certificate may express the requirement for at least a lifetime maximum total of 48 months coverage for each covered person in monetary terms. The monetary expression shall be at least a lifetime maximum total of 1,460 days of coverage for each covered person multiplied by a daily benefit amount of at least \$[171] 274 per day for policies/certificates sold in [2004] 2014. The minimum daily benefit shall be increased each year on the first day of January beginning in [2005] 2015. Policies/certificates sold after January 1, [2005] 2015 shall provide benefits at the increased minimum standard in the year sold. Minimum daily benefits for the next 10 years shall be as follows:

- (i) January 1, [2004] 2014 - \$[171] 274;
- (ii) January 1, [2005] 2015 - \$[180] 284;
- (iii) January 1, [2006] 2016 - \$[189] 294;
- (iv) January 1, [2007] 2017 - \$[198] 304;
- (v) January 1, [2008] 2018 - \$[208] 315;
- (vi) January 1, [2009] 2019 - \$[218] 326;
- (vii) January 1, [2010] 2020 - \$[229] 337;
- (viii) January 1, [2011] 2021 - \$[241] 349;
- (ix) January 1, [2012] 2022 - \$[253] 361;
- (x) January 1, [2013] 2023 - \$[265] 374.

Paragraph 1 of subdivision (b) of section 39.6 is hereby amended to read as follows:

(1) The policy/certificate shall provide at least a lifetime maximum total of 24 months coverage for each covered person. The policy/certificate may express the requirement for at least a lifetime maximum total of 24 months coverage for each covered person in monetary terms. The monetary expression shall be at least a lifetime maximum total of 730 days of coverage for each covered person multiplied by a daily benefit amount of at least \$[171] 274 per day for policies/certificates sold in [2004] 2014. The minimum daily benefit shall be increased each year on the first day of January beginning in [2005] 2015. Policies/certificates sold after January 1, [2005] 2015 shall provide benefits at the increased minimum standard in the year sold. Minimum daily benefits for the next 10 years shall be as follows:

- (i) January 1, [2004] 2014 - \$[171] 274;
- (ii) January 1, [2005] 2015 - \$[180] 284;
- (iii) January 1, [2006] 2016 - \$[189] 294;
- (iv) January 1, [2007] 2017 - \$[198] 304;
- (v) January 1, [2008] 2018 - \$[208] 315;
- (vi) January 1, [2009] 2019 - \$[218] 326;
- (vii) January 1, [2010] 2020 - \$[229] 337;
- (viii) January 1, [2011] 2021 - \$[241] 349;
- (ix) January 1, [2012] 2022 - \$[253] 361;
- (x) January 1, [2013] 2023 - \$[265] 374.

Paragraph 1 of subdivision (b) of section 39.7 is hereby amended to read as follows:

(1) Nursing home care. Nursing home care coverage shall be provided for not less than a lifetime maximum total of 24 months for each covered person. A covered person must be permitted to substitute home and community-based care benefits or residential care facility benefits for nursing home care benefits on the basis of two home and community-based care or residential care facility service days for one nursing home day. Coverage of nursing home care shall consist of payment for skilled nursing care, intermediate care, and custodial care in nursing homes of at least \$[253] 274 per day. Payment for nursing home care services may be limited to services rendered in a nursing home licensed by the jurisdiction in which it is located. The minimum nursing home daily benefit shall be increased each year on the first day of January beginning in [2013] 2015. Policies/certificates sold on or after January 1, [2013] 2015 shall provide benefits at the increased minimum standard in the year sold. Minimum daily benefits for the years listed below shall be as follows:

- (i) January 1, [2012] 2014 - \$[253] 274 (nursing home), \$[127]

137 (residential care facility and home and community-based care - 50 percent);

(ii) January 1, [2013] 2015 - \$[265] 284 (nursing home), \$[133] 142 (residential care facility and home and community-based care - 50 percent)[.];

(iii) January 1, 2016 - \$294 (nursing home), \$147 (residential care facility and home and community-based care - 50 percent);

(iv) January 1, 2017 - \$304 (nursing home), \$152 (residential care facility and home and community-based care - 50 percent);

(v) January 1, 2018 - \$315 (nursing home), \$157 (residential care facility and home and community-based care - 50 percent);

(vi) January 1, 2019 - \$326 (nursing home), \$163 (residential care facility and home and community-based care - 50 percent);

(vii) January 1, 2020 - \$337 (nursing home), \$168 (residential care facility and home and community-based care - 50 percent);

(viii) January 1, 2021 - \$349 (nursing home), \$174 (residential care facility and home and community-based care - 50 percent);

(ix) January 1, 2022 - \$361 (nursing home), \$180 (residential care facility and home and community-based care - 50 percent);

(x) January 1, 2023 - \$374 (nursing home), \$187 (residential care facility and home and community-based care - 50 percent).

Text of proposed rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

Data, views or arguments may be submitted to: Martin J. Wojcik, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 486-7815, email: martin.wojcik@dfs.ny.gov

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 the fourth amendment to Insurance Regulation 144 derives from Sections 202 and 302 of the Financial Services Law; Sections 301, 1117, 3201, 3217, 3221, 3229, 4235, 4237, and Article 43 of the Insurance Law; and Section 367-f of the Social Services Law.

Section 202 of the Financial Services Law establishes the office of the Superintendent.

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

Section 1117 of the Insurance Law authorizes the Superintendent to permit the sale of contracts in connection with a plan for long term care pursuant to the criteria set forth therein.

Section 3201 of the Insurance Law prohibits an accident and health insurance policy form to be delivered or issued for delivery in this state unless it has been filed with and approved by the Superintendent as conforming to the requirements of the Insurance Law and not inconsistent with the law.

Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure, for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under Article 32 and Article 43 of the Insurance Law, and Article 44 of the Public Health Law.

Section 3221 of the Insurance Law prohibits a policy of group or blanket accident and health insurance, except as provided in Insurance Law § 3221(d), to be delivered or issued for delivery in New York unless it contains in substance the provisions set forth therein or provisions which are in the opinion of the Superintendent more favorable to the holders of such certificates or not less favorable to the holders of such certificates and more favorable to policyholders.

Section 3229 of the Insurance Law authorizes the Superintendent to issue regulations establishing minimum standards for qualifying plans under the Partnership for Long Term Care program pursuant to Social Services Law § 367-f.

Section 4235 of the Insurance Law prohibits a policy of group accident, group health or group accident and health insurance to be delivered or issued for delivery in this state unless it conforms to the descriptions set forth in that section.

Section 4237 of the Insurance Law defines a blanket accident policy, a blanket health policy, and a blanket accident and health policy.

Article 43 of the Insurance Law sets forth requirements for non-profit medical and dental indemnity, or health and hospital services corporations.

Section 367-f of the Social Services Law establishes the Partnership for Long Term Care Program.

2. Legislative objectives: The Partnership for Long Term Care Program (the "Partnership") was established to encourage New Yorkers to imple-

ment solutions for their future long term care needs by combining private long term care insurance with Medicaid Extended Coverage. Social Services Law Section 367-f originally required an individual to be covered under a Partnership insurance policy or certificate that provides a residential health care facility benefit of no less than three years in order for the individual to be eligible for Medicaid Extended Coverage. Section 82 of Part H of Chapter 59 of the Laws of 2011 amended Section 367-f of the Social Services Law to grant to an individual, who exhausts benefits under a Partnership insurance policy or certificate that provides a residential health care facility benefit of not less than two years, eligibility for medical assistance without spending down any assets (“Total Asset Protection”), thereby reducing the cost for New Yorkers to purchase Partnership policies.

3. Needs and benefits: Regulation 144 sets forth standards for the New York State Partnership for Long Term Care Program, including the minimum daily benefit amounts (DBAs) that participating insurers must pay under long term care policies. The current regulation includes a schedule of minimum DBAs for the ten-year period ending December 31, 2013.

The proposed amendment establishes a schedule – developed in consultation with the NYS Department of Health and the Partnership – of minimum DBAs from 2014 through 2023 by using an annual compound inflation factor of 3.5%. The inflation factor of 3.5% implements a recommendation of the Governor’s Medicaid Redesign Team. This is the only change being made to the regulation. Both DOH and participating Partnership insurers are eager to update the schedule of minimum DBAs in anticipation of preparing Partnership Program marketing materials.

4. Costs: Insurers will incur no costs associated with the implementation of this amendment, because insurers that voluntarily participate in the Partnership program may use their current rates and forms. Similarly, the Department will have no costs associated with the implementation of this amendment. Local governments will also not incur any costs.

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

6. Paperwork: The amendment imposes no new reporting requirements. Insurers voluntarily participating in the Partnership will not need to submit rates or forms since this amendment only establishes the minimum benefit amounts that insurers must pay for the next ten years.

7. Duplication: These changes to the Partnership do not duplicate or conflict with any existing federal or state requirements.

8. Alternatives: There are no alternatives to this amendment since the existing regulation only establishes benefits amounts through 2013. This regulation is necessary in order to establish the benefit amounts for the next ten years.

9. Federal standards: This amendment will not affect compliance with any federal standard in any manner.

10. Compliance schedule: The rule will take effect on January 1, 2014.

Regulatory Flexibility Analysis

1. Effect of the rule: This amendment is directed at insurers that write New York State Partnership for Long Term Care program (“Partnership”) insurance, none of which falls within the definition of “small business” set forth in section 102(8) of the State Administrative Procedure Act. The Department of Financial Services has reviewed filed Reports on Examination and Annual Statements of these entities, and believes that there are none that are both independently owned and that employ fewer than 100 persons. The amendment merely reflects in dollar amounts the minimum daily benefit amounts from 2014 to 2023 that New York State Partnership insurers shall use.

Insurance agents and brokers who sell Partnership policies, many of whom are small businesses themselves, may be required to familiarize themselves with the new minimum daily benefit amounts. This regulation does not apply to or affect local governments.

2. Compliance requirements: These regulations will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

3. Professional services: Small businesses or local governments will not need professional services to comply with the regulations.

4. Compliance costs: These regulations will not impose any compliance costs upon small businesses or local governments.

5. Economic and technological feasibility: Small businesses or local governments will not incur an economic or technological impact as a result of the regulations.

6. Minimizing adverse impact: These regulations apply to the Partnership long term care insurance market throughout New York State. The same requirements will apply uniformly, and do not impose any adverse or disparate impact on small businesses or local governments.

7. Small business and local government participation: These regulations are directed at insurers licensed to do business in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act. Notice of the pro-

posal was previously published in the Department’s June 2013 Regulatory Agenda. This notice was intended to provide small businesses with the opportunity to participate in the rule making process, but no input was received. Interested parties were also consulted through direct meetings during the development of this amendment. The changes contained in this amendment have been discussed by the Partnership governance board. The Partnership governance board is comprised of representatives from Partnership insurers and representatives from the Department of Financial Services, Department of Health and the State Office for the Aging which acts as the consumer representative on the board.

Rural Area Flexibility Analysis

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

Job Impact Statement

The amendment will not adversely impact job or employment opportunities in New York. The amendment merely reflects in dollar amounts the minimum daily benefit amounts from 2014 to 2023 that New York State Partnership insurers shall use.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Administration of Vitamin K to Newborn Infants

I.D. No. HLT-36-13-00002-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 12.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Administration of Vitamin K to Newborn Infants.

Purpose: Requires Vitamin K administration to newborn infants to be consistent w/ 2012 American Academy of Pediatrics’ Policy Statement.

Text of proposed rule: Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 225 of the Public Health Law, Section 12.3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective 90 days after publication of a Notice of Adoption in the New York State Register, to read as follows:

12.3 Precautions to be observed for the prevention of hemorrhagic diseases and coagulation disorders of the newborn and infants related to vitamin K deficiency. It shall be the duty of the attending physician, licensed midwife, registered professional nurse or other licensed medical professional attending the newborn to assure administration of a single [parenteral] *intramuscular* dose of 0.5 - 1.0 mg of [natural] vitamin [K¹]; *K1* oxide (phytonadione) within [one hour] *six hours* of birth in accordance with current standards of medical care.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Paragraph (4) of Section 225 of the Public Health Law gives the Public Health and Health Planning Council authority to promulgate this regulation with the approval of the Commissioner of Health.

Legislative Objectives:

The proposed rule expands the time window for the administration of vitamin K to newborn infants to remove a barrier to mothers completing the first breastfeeding prior to routine procedures, such as vitamin K administration.

Needs and Benefits:

Current hospital regulations (10 NYCRR § 12.3) require administration of Vitamin K to the newborn within one hour of birth. This short time

period has been identified as a barrier in ensuring that new mothers and their infants have the recommended 30- 60 minutes of uninterrupted time for mother-infant skin-to-skin contact to complete the first breastfeeding before routine procedures occur, such as vitamin K administration. There are no medical reasons to require that vitamin K be administered to newborns within one hour of birth. This proposed rule expands the time window for administration of vitamin K to newborns from within one hour to within six hours of birth, which is consistent with the 2012 American Academy of Pediatrics Policy Statement and with the position statement of the Canadian Pediatric Society, Fetus and Newborn Committee (originally issued 1997). A public health goal of the New York State Department Health is to increase exclusive breastfeeding, and removing this barrier may help promote and support early initiation and exclusive breastfeeding during the birth hospitalization.

Costs:

Costs to the State Government:

The rule does not impose any new costs on state government.

Costs to Local Government:

The rule does not impose any new costs on local government.

Costs to Private Regulated Parties:

The proposed rule would have very minimal costs for hospitals. Minimal costs for hospitals may include the cost of changing the hospital policy and procedures for administering vitamin K to newborn infants and the costs of training staff to inform them of the change. Vitamin K will continue to be administered to newborn infants in the same manner and the same dose as is done currently under 10 NYCRR § 12.3. The proposed rule will simply change the current regulation to allow for greater flexibility.

Costs to the Regulatory Agency:

The rule does not impose any new costs on any regulatory agency.

Local Government Mandates:

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

Paperwork:

The rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties. Hospitals were and will continue to be required to document the administration of vitamin K.

Duplication:

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

Alternatives:

The Department considered other possible time frames. Extending the window for the administration of vitamin K to newborns from within one hour to within six hours was consistent with the recent recommendation of the 2012 American Academy of Pediatrics Policy Statement and with the position statement of the Canadian Pediatric Society, Fetus and Newborn Committee (originally issued 1997).

Federal Standards:

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

Compliance Schedule:

The proposed effective date will be upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Effect of Rule:

The provisions of these regulations will apply to the 228 general hospitals in New York State, including 18 general hospitals operated by local governments. Three general hospitals in the State are considered small businesses. These small business hospitals will not be affected differently from any other hospital.

Compliance Requirements:

Compliance requirements are applicable to those three hospitals considered small businesses as well as the 18 hospitals operated by local governments. Compliance will require: (a) reviewing and changing written policy for the administration of vitamin K to newborn infants; and (b) training applicable providers and staff about the change in the timeframe for administering vitamin K.

Professional Services:

Professional services are not anticipated to be impacted as a result of the following: (a) changing the timeframe for administration of vitamin K to newborn infants; and (b) training providers and staff about the change in the timeframe for administering vitamin K.

Compliance Costs:

Compliance costs associated with these regulations will be minimal and will arise as a result of: (a) changing written policy and procedures for administering vitamin K to newborn infants; and (b) informing staff about the change in the timeframe for administering vitamin K to newborn infants. This will apply to those hospitals defined as small businesses.

Economic and Technological Feasibility:

It is economically and technologically feasible for small businesses to comply with these regulations.

Minimizing Adverse Impact:

There are no adverse impacts anticipated. This regulatory change increases the flexibility of administering vitamin K. Hospitals will have a minimum of 90 days following adoption of these regulations to change their policy and protocols for administering vitamin K to newborn infants and three months to inform staff about the change.

Small Business and Local Government Participation:

These regulations have been discussed with leadership from the Hospital Association of New York (HANY), the Greater New York Hospital Association (GNYHA), and the Iroquois Healthcare Alliance. These associations represent hospitals throughout the State of New York, including those that are small businesses and operated by local governments. These three associations were all supportive of this initiative.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not required.

Rural Area Flexibility Analysis

Effect of Rule:

The provisions of these regulations will apply to general hospitals in New York State, including 47 general hospitals located in rural areas of the State. These hospitals will not be affected in any way different from any other hospital.

Compliance Requirements:

Compliance requirements are applicable to those hospitals located in rural areas. Compliance will require: (a) reviewing and changing written policy for the administration of vitamin K to newborn infants; and (b) informing applicable staff about the change in the timeframe for administering vitamin K.

Professional Services:

Professional services will not be impacted as a result of these regulations.

Compliance Costs:

Compliance costs associated with these regulations will be minimal and will arise as a result of: (a) changing written policy and procedures for administering vitamin K to newborn infants; and (b) training staff about the change in the timeframe for administering vitamin K to newborn infants. This will apply to those hospitals located in rural areas of New York State.

Minimizing Adverse Impact:

There are no adverse impacts anticipated. This regulatory change increases the flexibility of administering vitamin K. Hospitals will have a minimum of 90 days following adoption of these regulations to change their policy and protocol for administering vitamin K to newborn infants and three months to inform staff about the change.

Rural Area Participation:

These regulations have been discussed with hospital associations that represent hospitals throughout the State, including those that are located in rural areas. These associations have been supportive of this initiative.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201 a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. Newborn infants are still required to have a single dose of vitamin K after birth. This medication will be provided in the same setting (hospital or birthing facility) by staff with similar credentials, and the procedure will take the same amount of time. The change in the regulation will just widen the time window which this medication may be given, from within 1 hour of birth to within 6 hours of birth.

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

School Immunization Requirements

I.D. No. HLT-36-13-00007-P

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

Proposed Action: Amendment of Subpart 66-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2164 and 2168

Subject: School Immunization Requirements.

Purpose: To amend and update NYS school entry immunization requirements.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): This proposal will amend Subpart 66-1 (School Immunization Requirements) to update regulations so that they comply with current immunization recommendations and medical knowledge. The regulations would be effective July 1, 2014.

Proposed amendments to Section 66-1.1 provide that a child will be considered fully-immunized when (i) the child has received an adequate dosage and number of doses of an immunizing agent commensurate with his or her age or (ii) the child has otherwise demonstrated immunity to measles, mumps, rubella, hepatitis B, poliomyelitis (all three serotypes) and varicella through a positive serologic test or, for varicella only, disease as verified by a physician, nurse practitioner or physician's assistant. For those immunizations required by Public Health Law (PHL) § 2164 only, the number of doses that a child should have at any given age, and the minimum intervals between these doses, is determined by the Recommended Immunization Schedule for Persons Aged 0 Through 18 Years issued by the Advisory Committee on Immunization Practices (ACIP). If a child is not fully immunized, immunization must take place according to the Catch-Up Schedule of the ACIP.

For all vaccinations except poliomyelitis and varicella, children shall be assessed upon school entry or attendance, and annually thereafter, and be found to be fully immunized commensurate with their age. For poliomyelitis vaccination beginning on or after July 1, 2014, children shall be assessed upon entry or attendance to kindergarten and sixth grade, and/or their equivalent grades, and must be fully immunized commensurate with their age. As the students enrolling in kindergarten and sixth grade move up a grade level each year, the students enrolling in those higher grades, or grade equivalent, must be appropriately immunized against poliomyelitis. For varicella vaccination beginning on and after July 1, 2014, children shall be assessed upon entry or attendance to kindergarten and sixth grade, and/or their equivalent grades, and must have received two adequate doses of vaccine. As the students enrolling in kindergarten and sixth grade move up a grade level each year, the students enrolling in those higher grades, or grade equivalent, must be appropriately immunized against varicella.

The proposed amendments also provide that a child will be considered "in process" of receiving necessary immunizations if he or she has received at least the first dose in each required immunization series and has age appropriate appointments to complete the immunization series or is obtaining serologic tests and has appointments to complete the immunization series within 30 days of notification that serologic tests are negative. Children who are not fully immunized can only continue to attend school if they are in the process of completing the ACIP catch up schedule. If a child does not receive subsequent doses of vaccine in an immunization series according to the age appropriate ACIP catch-up schedule, the child is no longer in process and must be excluded from school, if not otherwise exempt from immunization requirements.

Proposed amendments to Section 66-1.2 update the definitions in the regulation to conform to changes in the New York State Immunization Information System (NYSIIS) statute (PHL § 2168), to account for the implementation of NYSIIS that has occurred since 2008, and to include references to the New York City Immunization Registry (CIR). The proposed amendments also expand upon the definition of authorized users as well as the types of information to be reported to NYSIIS or the CIR to include race, ethnicity, telephone numbers, birth order (if multiple birth), birth state/country, Vaccines for Children Program eligibility and Medicaid number.

Proposed amendments to Section 66-1.3 provide that a school shall not admit a child without receipt of a certificate of immunization from a health care practitioner, or from NYSIIS or the CIR, documenting that the child has been fully immunized, documentation that the child is "in process," a signed medical exemption, or a completed religious exemption. The proposed changes state that a principal or person in charge of a school shall not refuse to admit a child to school, based on immunization requirements, if that child is in process. The proposed changes also require that a medical exemption must be reissued annually and must contain sufficient information to identify a medical contraindication to a specific immunization and specify the length of time the immunization is medically contraindicated. For both medical and religious exemptions, the principal or person in charge of the school may require additional information supporting the exemption.

Proposed amendments to Section 66-1.4 clarify that the 14 calendar day period for continued school attendance may be extended to not more than 30 calendar days for an individual student who is transferring from out-of-state or from another country and can show a good faith effort to obtain the necessary evidence of immunization.

Proposed amendments to Section 66-1.6 provide that the certificate of immunization shall be prepared by the health practitioner who administers the immunizing agents and shall specify the products administered and the

dates of administration. It may also show physician, nurse practitioner, or physician assistant-verified history of varicella disease and/or laboratory evidence of immunity to measles, mumps, rubella, varicella, Hepatitis B and all 3 serotypes of poliomyelitis contained in the polio vaccines.

Proposed amendments to Section 66-1.7 provide that every school shall annually provide the Commissioner of Health, or in the city of New York, the New York City Commissioner of Health, a summary regarding compliance with immunization requirements. For all schools, excluding public schools within New York City, the summary will be provided in the form of the yearly school survey conducted by the Department of Health.

Proposed amendments to Sections 66-1.8 and 66-1.9 clarify the obligation of the school to notify the local health authority, when a child has been excluded because of lack of acceptable evidence of immunization or exemption, and the obligation of the local health authority to arrange for a suitable health practitioner to administer immunizations.

Proposed amendments to Section 66-1.10 provide that, for those diseases listed in PHL § 2164, in the event of an outbreak of disease in a school, the Commissioner, or his or her designee, or in the City of New York, the New York City Commissioner of Health may order the exclusion of children who have been exempted from immunization or are "in process" of receiving required immunizations. Any exclusion shall continue until the Commissioner, or his or her designee, or the New York City Commissioner of Health (as appropriate), determines that the danger of disease transmission has passed. The proposed changes also require schools to maintain a current list of susceptible students who should be excluded from attendance in the event of an outbreak of vaccine-preventable disease.

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

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

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

Summary of Regulatory Impact Statement

Background:

The authority for school entry immunization requirements and the statewide immunization information system stems from Article 21, Title VI, Sections 2164 and 2168 of the Public Health Law (PHL): Poliomyelitis and Other Diseases. The legislative objective of PHL § 2164 includes the protection of the health of residents of the state by assuring that children are immunized according to current recommendations before attending day care, pre-k, or school, to prevent the transmission of disease and accompanying morbidity and mortality. PHL § 2168 establishes the New York State Immunization Information System. Current regulations are out-of-date and need to be amended to comply with currently accepted medical practice and recommendations, to address statutory changes to PHL § 2168 and to account for the implementation of NYSIIS that has occurred since 2008.

The introduction and widespread use of vaccines have profoundly reduced the occurrence of many serious infectious diseases. Prior to vaccines, thousands of children each year, living in the United States (US), could expect to die or be left with life-long disabilities as a result of contracting diseases that are now preventable by vaccination, such as smallpox, poliomyelitis, rubella, measles, diphtheria and pertussis. Similarly, once commonly encountered and often deadly diseases such as diphtheria and rubella are becoming a rarity in the US as a result of the routine use of vaccination against these and other infectious diseases. Many of these now vaccine-preventable diseases, due to their person-to-person mode of transmission, have historically occurred at very high rates in pre-school and school-aged children. Consequently, it is of the utmost importance, that this cohort maintains a high rate of vaccination coverage to prevent disease outbreaks. Historically, both nationwide and in New York State, school vaccination laws/requirements have been instrumental in helping to achieve high rates of immunization among school-aged children and consequently, in helping to prevent many diseases.

The development of school entry laws typically begins with public health recommendations made by the Advisory Committee on Immunization Practices (ACIP). ACIP provides advice and guidance to the Secretary of the U. S. Department of Health and Human Services, the Assistant Secretary for Health, and the CDC on the control of vaccine-preventable diseases. ACIP makes their recommendations based on evidence presented to them by both medical and other health care professional organizations. Their recommendations shape national immunization policy and are usually adopted by such professional organizations such as the American Association of Pediatricians, the American Association of Family Physicians, and the American College of Physicians. ACIP recommendations form the standard of care for immunization practices in the US, and school entry laws need to follow these standards as closely as possible. New York

State regulations need to be modified to be current with immunization practices.

Necessity for Regulation Updates:

New York State's immunization rates for school-aged children have remained high, due in large part to school entry vaccination requirements. New York State has over 650 school districts and over 15,000 schools, including day cares, elementary, secondary, private, and public schools. Overall, immunization rates are consistently over 90 percent throughout the state and also in most individual schools; however, variations do exist. For instance, although the overall rate for religious exemptions in NYS is 53%, the exemption rates by grade group per county vary greatly. For children enrolled in grade 1, religious exemption rates range from 0% to 13.51%. This variation can be explained in part by the inhabitants of a given county. Counties with Amish and Mennonite communities tend to have higher religious exemption rates. The majority of schools in Amish and Mennonite communities do not offer kindergarten or high school grades, only enrolling children in grades 1 through 8. Therefore, the immunization rates for counties with large Amish and Mennonite communities have higher religious exemption rates for grades 1 through 8. There are other schools, where children with religious exemptions tend to cluster.

When a significant proportion of individuals in a community are immunized, those persons serve as a protective barrier against the likelihood of transmission of disease in the community, thus indirectly protecting those who are not fully immunized. This protection is referred to as "community immunity" or "herd immunity." If a large proportion of a community decides to not be vaccinated, the protection levels that initially existed via herd immunity decline, and disease transmission increases. The importance of high immunization rates in NYS remains paramount, despite the sometimes low rates of disease in the U.S.

The purpose of the proposed regulatory changes is to update regulations so that they comply with current immunization recommendations and knowledge. Over time, through routine vaccine use, it has become obvious that changes in the schedule are necessary to maximize the protection of children and the community. The dangers of under-vaccination have been dramatically demonstrated by the number of outbreaks of diseases that have not been seen in developed countries in large numbers for many years. In addition, a rise in the number of outbreaks related to high rates of exemption to immunization in certain communities around the country, have illustrated the need for stronger school entry requirements.

The changes to these regulations include updating the school entry and attendance immunization requirements to comply with current recommendations of the official schedule as approved by ACIP and other major medical professional societies. These include: increasing the required number of doses of diphtheria, tetanus and acellular pertussis (DTaP) and varicella vaccines, clarifying the age appropriate vaccinations required with polio, hepatitis b, haemophilus influenzae type b, and pneumococcal vaccines, clarifying that appropriate spacing of vaccines is essential for efficacy, and clarifying definitions and key parts of the regulations, such as what constitutes immunity and how to determine the time a student can be in process of receiving their vaccines.

Since 2007, ACIP has recommended two doses of varicella (chicken pox) vaccine, one dose at 12 to 18 months of age and a second dose at 4-6 years of age. This was based on the fact that one dose of varicella vaccine seemed to allow an unacceptable number of breakthrough cases of varicella disease. Exact rates of varicella disease are not known for New York State, but national studies have shown a steady decline in the number of cases of the disease as immunization has become more widespread.

All affected children will be required to adhere to the proposed school entry regulations on and after July 1, 2014.

Associated Costs:

The proposed regulatory changes are not expected to result in substantial costs to the state or local government, but instead will likely result in cost savings to the state. Routine childhood immunizations have been estimated to result in a cost savings of approximately \$10 billion from direct costs. The CDC estimates that every dollar spent on immunization saves \$18.43, producing societal aggregate savings of \$42 billion. Potential savings to Medicaid and other payers are also expected secondary to the prevention of cases of disease.

The Vaccines for Children Program (VFC), a federal entitlement program, provides vaccine for eligible children. In addition, the "317" federal grant supports purchase of vaccine for administration at no cost to children at local health departments, and also supports immunization delivery, surveillance, communication and education. Private insurance, the VFC Program and the "317" grant will cover the cost of most of the additional vaccines required for school entry to eligible individuals. The State, however, may be required to use additional funds for the purchase and administration of vaccine to meet the revised school entry requirements for those individuals who are underinsured and/or participate in the State Children's Health Insurance Program (SCHIP).

The NYSDOH Bureau of Immunization currently operates the New

York State Immunization Information System (NYSIIS), which will aid in the recording of immunizations and has the ability to identify and generate notifications to students who are not in compliance with school immunization entry/attendance requirements. Currently 2,425 educational institutions in NYS are actively utilizing NYSIIS. These institutions are currently able to search for a given student's immunization history, review it and determine compliance with current school entry requirements. These features are already a part of NYSIIS and thus the expansion of immunization requirements will not result in any additional costs for the State.

The NYSDOH will need to provide education on and promote the regulatory changes that will go into effect in the fall of 2014. The NYSDOH has contact information for all schools in NYS and currently communicates with schools across the state on a regular basis. The expansion of school immunization requirements and the need for education of all affected schools will not be a burden to the State as this communication takes place on a frequent basis already. Funds necessary for educational/media campaigns will be made available from the existing Department of Health budget.

The cost to local governments and school districts is difficult to estimate, but should be minimal. School staff already collect immunization records and make sure that students comply with school entry requirements. The great majority of students will already be in compliance with the recommended schedule because this is the standard of care and most physicians and other health care providers comply with the recommendations. Administrative staff at public schools will be responsible for assuring that each student is in compliance with the revised school entry requirements at the time of registration. School staff will be able to utilize NYSIIS to check and record immunization records, a cost saving measure that was not available the last time regulations were changed. Administrative procedures already in place will be utilized to notify students of immunization requirements and to notify deficient students of the need to comply. Given that schools are already checking, recording and notifying deficient students, the costs of implementing these regulations will likely be minimal.

Additional costs for the administration of vaccine by local health departments to meet the revised school entry requirements in the county health department clinics will likely be incurred. A substantial portion of the costs of organizing additional county health departments' clinic services will be eligible for reimbursement through State public health local assistance or from third party payers.

It is difficult to determine what, if any, additional expenses may be incurred by these measures to private parties, however, costs are predicted to be minimal. Given that the revised school entry requirements incorporate the currently recommended ACIP immunization schedule, many medical practices have already been recommending and administering these vaccines to their patients. It is possible that the new regulations will prompt an initial increase in patient flow to update all children's vaccine status in accordance with the new school entry requirements. This could require some additional staffing time and/or office hours to accommodate these patients, but any additional visits would be eligible for reimbursement from payers. It is likely, however, that after this initial phase, no further cost will be incurred by private parties.

Regulatory Flexibility Analysis

Effect of Rule:

Any facility defined as a school pursuant to PHL § 2164 will be required to comply. Schools that are affected by this rule will include approximately: 5,498 public, private, or parochial child-caring centers, 9,338 day care agencies, 642 nursery schools, 6,387 kindergartens, elementary, intermediate, or secondary class or school buildings.

Compliance Requirements:

All schools must document the immunization status of all students who are entering or attending their facility. This information includes immunizations received, and/or history of disease, and/or serology performed, and/or medical and/or religious exemptions to said immunization(s).

The approximate number of students are as follows: 128,383 in public, private, or parochial child-caring centers, 187,752 in day care agencies, 39,312 in nursery schools, and 3,081,724 in kindergartens, elementary, intermediate, or secondary class or school buildings. However, because schools were already required to collect immunization information, the burden of compliance with this new rule is substantially minimized.

Professional Services:

Schools are already mandated to comply with immunization requirements for entering/attending students and therefore immunization record retrieval already occurs with necessary follow-up if applicable. It is not anticipated that schools will need to hire additional staff to meet this mandate.

Compliance Costs:

The cost to facilities to meet this mandate is estimated to be negligible, because facilities are already required to inspect vaccination records of all

students and appropriate vaccination of the student body may result in cost savings. Specifically, it is anticipated that any costs incurred to check vaccination records will be offset by savings in direct medical costs by reducing vaccine preventable disease transmission among students, as well as savings in indirect costs associated with student and school staff absenteeism.

Economic and Technological Feasibility:

This proposal is economically and technically feasible. Many schools currently have read-only access to retrieve immunization information from the New York State Immunization Information System (NYSIIS) for students outside of New York City (NYC), and the Citywide Immunization Registry (CIR) for students within NYC. Because schools have direct read-only access to the consolidated immunization record through NYSIIS or the CIR, they are able to efficiently identify children at risk for vaccine preventable diseases secondary to their under-immunization; this is critical during outbreak situations. In addition, access to this information simplifies assessment of immunization coverage as required for school entry/attendance.

No software needs to be purchased and no other fees are required to access the web-based systems. Using electronic tools for student record immunization queries also results in a significant cost savings when compared to the effort required to collect and analyze the volume of paper immunization histories provided by parents to the school.

Minimizing Adverse Impact:

The Advisory Committee on Immunization Practices (ACIP) is the body that creates the recommended immunization schedule for children on an annual basis and is the authority in determining the vaccinations types and intervals in which children should be immunized. The proposal to require children to be up to date on their immunizations as specified by the schedule set forth by the ACIP is a generally accepted as the standard of practice. However, the regulations do provide an exception when a medical contraindication or religious exemption exists. It does not include an exception for any other philosophical, social or economic reason because such exceptions substantially undermine the effectiveness of the health initiative. With respect to minimizing the economic impact on the schools, many, if not all schools already have mechanisms in place to verify immunization requirements.

Small Business and Local Government Participation:

Small businesses and local governments would be positively impacted by these regulations in that with improved immunization compliance in school settings, the likelihood of vaccine preventable disease outbreaks, and their resultant negative effects on local communities, would be lessened, if not eliminated.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural facilities defined within PHL Articles 28, 36, or 40. It will require additional documentation, record-keeping and other compliance requirements on public or private entities, but it is not expected to adversely affect rural areas.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a (2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Environmental Protection Fund (EPF) Grant Application Procedures for Parks, Historic Preservation and Heritage Areas

I.D. No. PKR-26-13-00006-A

Filing No. 841

Filing Date: 2013-08-16

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 sections 439.3(a)(6-8), 440.7(c), (d)(8-10), (e), 440.10(b) and 440.12 of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, section 3.09(8); and Environmental Conservation Law, sections 54-0101 to 54-0901

Subject: Environmental Protection Fund (EPF) grant application procedures for parks, historic preservation and heritage areas.

Purpose: To align OPRHP's procedures and offices with the procedures and regions for the Consolidated Funding Application.

Text or summary was published in the June 26, 2013 issue of the Register, I.D. No. PKR-26-13-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, Albany, NY 12238 (USPS); 625 Broadway, Albany, NY 12207 (courier delivery), (518) 486-2921, email: rule.making@parks.ny.gov

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Approving a \$10,000 Hookup Fee to Developers for Each New Home Attached to the Water System

I.D. No. PSC-26-08-00021-A

Filing Date: 2013-08-16

Effective Date: 2013-08-16

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

Action taken: On 8/15/13, the PSC adopted an order approving the petition by Saratoga Glen Hollow Water Supply Corporation to assess a \$10,000 hookup fee for each newly constructed house.

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

Subject: Approving a \$10,000 hookup fee to developers for each new home attached to the water system.

Purpose: To approve a \$10,000 hookup fee to developers for each new home attached to the water system.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the petition of Saratoga Glen Hollow Water Supply Corporation to assess a \$10,000 hookup fee for each newly constructed house attached to the water system, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-W-0549SA1)

NOTICE OF ADOPTION

Approving the Maximum Quarterly Surcharge from \$100 to \$150

I.D. No. PSC-05-13-00004-A

Filing Date: 2013-08-19

Effective Date: 2013-08-19

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

Action taken: On 8/15/13, the PSC adopted an order approving a petition for reconsideration by Arbor Hills Waterworks, Inc. to increase a quarterly surcharge per customer from \$100 to \$150.

Statutory authority: Public Service Law, sections (4)1, 5(1)(f), 89-c(1) and (10)

Subject: Approving the maximum quarterly surcharge from \$100 to \$150.

Purpose: To approve the maximum quarterly surcharge from \$100 to \$150.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the petition of Arbor Hills Waterworks, Inc. for reconsideration of the Commission’s 2012 order to allow an increase in the quarterly customer surcharge from \$100 to 150 per customer due to increases in costs for radiological testing, to a maximum approved level for Unexpected/Extraordinary Expenses (Escrow Account) of \$25,000, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-W-0313SA2)

NOTICE OF ADOPTION

Approving the Maximum Quarterly Surcharge from \$100 to \$150

I.D. No. PSC-05-13-00008-A

Filing Date: 2013-08-19

Effective Date: 2013-08-19

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

Action taken: On 8/15/13, the PSC adopted an order approving a petition for reconsideration by Arbor Hills Waterworks, Inc. to increase a quarterly surcharge per customer from \$100 to \$150.

Statutory authority: Public Service Law, sections (4)1, 5(1)(f), 89-c(1) and (10)

Subject: Approving the maximum quarterly surcharge from \$100 to \$150.

Purpose: To approve the maximum quarterly surcharge from \$100 to \$150.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the petition of Arbor Hills Waterworks, Inc. for reconsideration of the Commission’s 2012 order to allow an increase in the quarterly customer surcharge from \$100 to 150 per customer due to increases in costs for radiological testing, to a maximum approved level for Unexpected/Extraordinary Expenses (Escrow Account) of \$25,000, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-W-0300SA2)

NOTICE OF ADOPTION

Approving Amendments of a Tariff Filing

I.D. No. PSC-06-13-00012-A

Filing Date: 2013-08-19

Effective Date: 2013-08-19

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

Action taken: On 8/15/13, the PSC adopted an order approving National Fuel Gas Distribution Corporation’s petition to make revisions to PSC No. 8 — Gas to revise Service Classification No. 7.

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

Subject: Approving amendments of a tariff filing.

Purpose: To approve amendments of a tariff filing.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the tariff filing by National Fuel Gas Distribution Corporation to make revisions to PSC No. 8 — Gas to revise Service Classification No. 7 — Sales for Service for Customers Operating Natural Gas Vehicles, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-G-0017SA1)

NOTICE OF ADOPTION

Approving the Transfer of Property

I.D. No. PSC-14-13-00009-A

Filing Date: 2013-08-20

Effective Date: 2013-08-20

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

Action taken: On 8/15/13, the PSC adopted an order approving the petition filed by New York State Electric & Gas Corporation to transfer the property it owns located at 610 Hancock Street, Ithaca to the Ithaca City School District.

Statutory authority: Public Service Law, section 70

Subject: Approving the transfer of property.

Purpose: To approve the transfer of property.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the petition of New York State Electric & Gas Corporation to transfer the property it owns at 610 Hancock Street, Ithaca to the Ithaca City School District, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-M-0090SA1)

NOTICE OF ADOPTION

Approving the Transfer of Property

I.D. No. PSC-15-13-00011-A

Filing Date: 2013-08-20

Effective Date: 2013-08-20

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

Action taken: On 8/15/13, the PSC adopted an order approving the petition filed by New York State Electric & Gas Corporation to transfer certain street lighting facilities to the Town of Plattsburgh, Clinton County.

Statutory authority: Public Service Law, section 70

Subject: Approving the transfer of property.

Purpose: To approve the transfer of property.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the petition of New York State Electric & Gas Corporation to sell its system of street lighting facilities located in the Town of Plattsburgh, Clinton County, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-E-0138SA1)

NOTICE OF ADOPTION

Approving the 2013 Electric Emergency Response Plan for Con Edison

I.D. No. PSC-17-13-00012-A

Filing Date: 2013-08-16

Effective Date: 2013-08-16

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

Action taken: On 8/15/13, the PSC adopted an order approving the 2013 Electric Emergency Response Plan filed on April 1, 2013 by Consolidated Edison Company of New York, Inc. (Con Edison).

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Approving the 2013 electric emergency response plan for Con Edison.

Purpose: To approve the 2013 electric emergency response plan for Con Edison.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the 2013 Electric Emergency Response Plan filed on April 1, 2013 by Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-E-0025SA2)

NOTICE OF ADOPTION

Approving the 2013 Electric Emergency Response Plan for NYSEG and RG&E

I.D. No. PSC-17-13-00013-A

Filing Date: 2013-08-16

Effective Date: 2013-08-16

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

Action taken: On 8/15/13, the PSC adopted an order approving the 2013 Electric Emergency Response Plan filed on April 1, 2013 by New York State Electric and Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E).

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Approving the 2013 electric emergency response plan for NYSEG and RG&E.

Purpose: To approve the 2013 electric emergency response plan for NYSEG and RG&E.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the 2013 Electric Emergency Response Plan filed on April 1, 2013 and revised in response to Staff's July 1, 2013 letter, by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (Companies), and directed the companies to implement the plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-E-0715SA4)

NOTICE OF ADOPTION

Approving the 2013 Electric Emergency Response Plan for O&R

I.D. No. PSC-17-13-00014-A

Filing Date: 2013-08-16

Effective Date: 2013-08-16

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

Action taken: On 8/15/13, the PSC adopted an order approving the 2013 Electric Emergency Response Plan, filed on April 2, 2013 by Orange and Rockland Utilities, Inc. (O&R).

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Approving the 2013 electric emergency response plan for O&R.

Purpose: To approve the 2013 electric emergency response plan for O&R.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the 2013 Electric Emergency Response Plan filed on April 2, 2013 and revised in response to Staff's July 1, 2013 letter, by Orange and Rockland Utilities, Inc. (Company), and directed the Company to implement the plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-E-0025SA3)

NOTICE OF ADOPTION

Approving the 2013 Electric Emergency Response Plan for Con Edison

I.D. No. PSC-17-13-00015-A

Filing Date: 2013-08-16

Effective Date: 2013-08-16

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

Action taken: On 8/15/13, the PSC adopted an order approving the 2013 Electric Emergency Response Plan filed on April 1, 2013 by Consolidated Edison Company of New York, Inc. (Con Edison).

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Approving the 2013 electric emergency response plan for Con Edison.

Purpose: To approve the 2013 electric emergency response plan for Con Edison.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the 2013 Electric Emergency Response Plan filed on April 1, 2013 and revised in response to Staff's July 1, 2013 letter, by Consolidated Edison Company of New York, Inc. (Company), and directed the Company to implement the plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-E-0025SA1)

NOTICE OF ADOPTION

Approving the 2013 Electric Emergency Response Plan for CHG&E

I.D. No. PSC-17-13-00016-A

Filing Date: 2013-08-16

Effective Date: 2013-08-16

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

Action taken: On 8/15/13, the PSC adopted an order approving the 2013 Electric Emergency Response Plan filed by Central Hudson Gas & Electric Corporation (CHG&E).

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Approving the 2013 electric emergency response plan for CHG&E.

Purpose: To approve the 2013 electric emergency response plan for CHG&E.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the 2013 Electric Emergency Response Plan filed on March 28, 2013 and revised in response to Staff's July 1, 2013 letter, by Central Hudson Gas and Electric Corporation (Company), and directed the Company to implement the plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-E-0148SA1)

NOTICE OF ADOPTION

Approving the 2013 Electric Emergency Response Plan for O&R

I.D. No. PSC-17-13-00017-A

Filing Date: 2013-08-16

Effective Date: 2013-08-16

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

Action taken: On 8/15/13, the PSC adopted an order approving the 2013 Emergency Response Plan, filed on April 2, 2013 by Orange and Rockland Utilities, Inc. (O&R).

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Approving the 2013 electric emergency response plan for O&R.

Purpose: To approve the 2013 electric emergency response plan for O&R.

Substance of final rule: The Commission, on August 15, 2013, adopted

an order approving the 2013 Emergency Response Plan filed on April 2, 2013 by Orange and Rockland Utilities, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-E-0025SA4)

NOTICE OF ADOPTION

Approving the 2013 Electric Emergency Response Plan for Niagara Mohawk Power Corporation

I.D. No. PSC-17-13-00019-A

Filing Date: 2013-08-16

Effective Date: 2013-08-16

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

Action taken: On 8/15/13, the PSC adopted an order approving the 2013 Electric Emergency Response Plan filed by Niagara Mohawk Power Corporation.

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Approving the 2013 electric emergency response plan for Niagara Mohawk Power Corporation.

Purpose: To approve the 2013 electric emergency response plan for Niagara Mohawk Power Corporation.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the 2013 Electric Emergency Response Plan filed on March 29, 2013 and revised in response to Staff's July 1, 2013 letter, by Niagara Mohawk Power Corporation (Company), and directed the Company to implement the plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-E-0148SA2)

NOTICE OF ADOPTION

Approving the Lease of Property

I.D. No. PSC-21-13-00006-A

Filing Date: 2013-08-20

Effective Date: 2013-08-20

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

Action taken: On 8/15/13, the PSC adopted an order approving the petition filed by New York State Electric & Gas Corporation to lease the property located at 1111 Filkins Road, Arcadia, to Rokstad Power, Inc.

Statutory authority: Public Service Law, section 70

Subject: Approving the lease of property.

Purpose: To approve the lease of property.

Substance of final rule: The Commission, on August 15, 2013, adopted an order approving the petition of New York State Electric & Gas Corporation to lease the Newark Service Center, located at 1111 Filkins Road, Arcadia, to Rokstad Power, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-E-0166SA1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Utility Refund Disposition

I.D. No. PSC-36-13-00005-P

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

Proposed Action: The Commission is considering the petition of New York American Water Company regarding the disposition of a property tax refund received from the Village of Malverne for \$722,612.

Statutory authority: Public Service Law, section 113(2)

Subject: Utility Refund Disposition.

Purpose: To approve the petition of New York American Water in the distribution of a property tax refund.

Public hearing(s) will be held at: 10:00 a.m., Feb. 11, 2014 at Public Service Commission, 3 Empire State Plaza, Albany, NY.

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 Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by New York American Water Company, Inc. f/k/a Long Island Water Corporation in the disposition of a property tax refund for \$722,612 from the Village Malverne.

The proposed action would allow New York American Water Company to share the refund, in a manner to be determined, between the Company and ratepayers.

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) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-W-0297SP1)

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

Approval of a Contract for the Sale of Capacity and Energy from NYSEG to Nucor

I.D. No. PSC-36-13-00006-P

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

Proposed Action: The Commission is considering a petition from Nucor Steel Auburn, Inc. (Nucor) and New York State Electric & Gas Corporation (NYSEG) requesting approval of a contract for the sale of capacity and energy from NYSEG to Nucor.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), (2), (3), 66(1), (5), (9), (10), (12) and (12-b)

Subject: Approval of a contract for the sale of capacity and energy from NYSEG to Nucor.

Purpose: Consideration of approval of a contract for the sale of capacity and energy from NYSEG to Nucor.

Substance of proposed rule: The Public Service Commission is considering a petition filed on July 31, 2013 by Nucor Steel Auburn, Inc. (Nucor) and New York State Electric & Gas Corporation (NYSEG) requesting approval of the extension of a contract for the sale of electric capacity and energy from NYSEG to Nucor for service to its manufacturing facility located in Auburn, NY. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

Data, views or arguments may be submitted to: 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-0353SP1)

Department of State

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

Pet Cemeteries Seeking to Inter the Cremated Remains of Pet Owners With the Remains of Their Pets

I.D. No. DOS-36-13-00004-P

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

Proposed Action: Addition of section 201.19 to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, section 750-d; and Not-for-Profit Corporation Law, section 1504(c)

Subject: Pet cemeteries seeking to inter the cremated remains of pet owners with the remains of their pets.

Purpose: To permit pet cemeteries to inter the cremated remains of pet owners with the remains of their pets.

Text of proposed rule: A new section 201.19 is added to Title 19 NYCRR Part 201 to read as follows:

Section 201.19 Disposal of Cremains at Pet Cemeteries.

The owner of private property on which a pet cemetery licensed pursuant to General Business Law Article 35-C is located and operated, and the operator of such pet cemetery may permit the disposal of cremains, as defined in N-PCL section 1502(i), in such pet cemetery without acting as a cemetery and without violating N-PCL Article 15 and 19 NYCRR Parts 200 and 201 if:

(a) neither the property owner nor the pet cemetery identifies, advertises, or otherwise promotes the pet cemetery or the property as a place for disposal of cremains;

(b) neither the property owner nor the pet cemetery solicits, encourages or entices customers of the pet cemetery to dispose of cremains in the pet cemetery;

(c) neither the property owner nor the pet cemetery charges a fee in relation to the disposal of cremains;

(d) customers seeking to dispose of cremains in the pet cemetery are

charged the same amounts for lots and for the disposal of pet remains as are charged to customers who do not seek to dispose of cremains in the pet cemetery;

(e) the pet cemetery provides the following printed notice: 1) when a customer inquires about disposing of cremains in the pet cemetery, but before the customer commits to purchasing a lot with the right to dispose of cremains; and 2) when a person with custody or control over cremains makes arrangements for the disposal of the cremains at the pet cemetery, but before such arrangements are finalized. The printed notice must be in fourteen point bold font and must be contained in a document separate from all other forms and documents provided to the customer or the person making arrangements:

"This property is not a cemetery for human cremains.

Cremains disposed of on this property WILL NOT be covered by the protections and legal rights granted by New York State Law to cremains disposed of in a cemetery.

The family and descendants of the deceased WILL NOT be covered by the protections and legal rights granted by New York State Law to the family and descendants of deceased persons whose cremains are disposed of in a cemetery such as mandatory records of burials, rights of memorialization and restrictions on removals.

There is NO ASSURANCE under New York State Law that this property will be maintained in its current condition and for its current purpose.

There is NO ASSURANCE under New York State Law that this property will not be sold or transferred to another owner, or that access to this property will remain open to you, the family or the descendants of the deceased.

There is NO ASSURANCE under New York State Law that any burial plots or memorials for cremains on this property will be maintained or preserved for any period of time.

There is NO ASSURANCE under New York State Law that any cremains disposed of on this property will remain for any period of time in the location they were disposed, or on this property at all."

Text of proposed rule and any required statements and analyses may be obtained from: Antonio Milillo, Department of State, Office of General Counsel, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, (518) 474-6740, email: antonio.milillo@dos.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: General Business Law section 750-d authorizes the Department of State to adopt rules and regulations with respect to the operation of pet cemeteries and pet crematoriums and other matters incidental or appropriate for the proper administration and enforcement of General Business Law article 35-C.

2. Legislative Objectives: The legislative intent of article 35-C of the General Business Law is, among other things, to protect the "vital interest in the establishment, maintenance and preservation of pet cemeteries and pet crematoriums and the proper operation of the businesses" and their sound management. Article 35-C is "an exercise of the police powers of this State to protect the well-being of our citizens, to promote the public welfare, to promote the health of the public and to prevent pet cemeteries and pet crematoriums from falling into disrepair and dilapidation and becoming a burden upon the community."

3. Needs and Benefits: The purpose of proposed 19 NYCRR § 201.19 is to preserve and maintain the distinction between pet cemeteries and cemeteries for human remains and to ensure that members of the public are fully informed about their differences before deciding to inter human cremated remains in a pet cemetery. Approximately one year ago, the New York State Cemetery Board learned that a New York pet cemetery was engaging in the activity of a cemetery for human remains by interring human cremated remains ("cremains"¹), a violation of Not-For-Profit Corporation Law (NPCL) Article 15, which permits only not-for-profit cemeteries organized under that article to engage in the activity of a cemetery for human remains. The pet cemetery was advertising, promoting and receiving a fee for the service of interring the cremains of pet owners with the remains of their pets. The Department of State's Division of Cemeteries ordered the pet cemetery to cease interring cremains. Subsequently, pet cemeteries and members of the public encouraged the Cemetery Board and Division of Cemeteries to find a way for pet cemeteries to accept cremains for interment without violating NPCL Article 15 so that the remains of pet owners could be buried with the remains of their pets. This proposed section 201.19 would do just that. It would allow the cremains of pet owners to be buried with the remains of their pets, but only if the pet cemetery does not promote such service, does not receive a fee for such service and discloses to the consumer that a pet cemetery does not afford all the protections that a human cemetery affords to human remains. The regulation would achieve the balance of permitting pet

cemeteries to provide a service which many consumers seek without violating NPCL Article 15, and protecting consumers by requiring disclosure of important information.

4. Costs:

a. Regulated Parties. Costs to regulated parties would be minimal. The requirement that pet cemeteries provide written disclosure and keep records of such disclosures will result in minimal extra cost.

b. The agency, the State and local governments. No increase or decrease in costs is anticipated.

5. Local Government Mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Additional paperwork in the form of a consumer disclosure would be required of pet cemeteries.

7. Duplication: These regulations would not duplicate existing State and Federal regulations.

8. Alternatives: Initially, the Cemetery Board and Division of Cemeteries felt that only a ban on the interment of cremains in pet cemeteries would maintain the distinction between pet cemeteries and human cemeteries and would ensure that NPCL Article 15 is not violated. However, in view of consumer demand for this service, the Board and the Division determined that a pet cemetery could accept cremains for interment in limited circumstances and still not be engaged in the activity of a cemetery for human remains. Other options were considered, such as allowing pet remains to be interred in cemeteries for human remains. However, that would have been a significant departure from current law and practice, would have required complex regulation, and potentially would have offended individuals whose personal or religious beliefs require that their remains not be interred near animal remains.

9. Federal Standards: At this time there are no federal standards with regard to pet cemetery operations.

10. Compliance Schedule: These regulations would take effect sixty (60) days from date of publication in the New York State Register of a Notice of Adoption.

¹ See Not-For-Profit Corporation Law § 1502(i).

Regulatory Flexibility Analysis

1. Effect of Rule: There are 84 pet cemeteries throughout the State that are under the jurisdiction of the Division of Cemeteries and which will be affected by this rule. This rule would not affect any local governments.

2. Compliance Requirements: This proposed rule specifies procedures to be followed before a pet cemetery may permit the interment of the cremated remains ("cremains") of a pet owner. Under the rule, pet cemeteries would provide disclosure forms and keep copies of those forms.

3. Professional Services: Pet cemeteries are unlikely to need professional services in order to comply with this proposed rule.

4. Compliance Costs: Most of the revisions require a change in procedure—keeping and providing disclosure forms—that involves little or no cost to the pet cemeteries. Although the rule does not permit pet cemeteries to receive a fee for interring human cremated remains (referred to as "cremains" in the Not-For-Profit Corporation Law and defined in Not-For-Profit Corporation Law § 1502(i)), at this time pet cemeteries are prohibited from interring such remains, and therefore, this change will not reduce pet cemetery income. There will be a small cost in relation to printing and providing copies of disclosure forms.

5. Economic and Technological Feasibility: It is economically and technologically feasible for pet cemeteries to comply with the regulation.

6. Minimizing Adverse Impact: This regulation would not have an adverse impact on pet cemeteries and would provide a method for accepting cremains for interment without violating laws relating to human cemeteries.

7. Small Business and Local Government Participation: The regulation was presented to the New York State Association of Cemeteries (NYSAC), the International Association of Pet Cemeteries and Crematoriums (IAPCC), and the Funeral Consumers Alliance of L.I./NYC (Alliance). The Alliance had no comments or objections to the proposed regulation. NYSAC and IAPCC objected to the regulation but offered no revisions or alternatives. Copies of the proposed regulation were also made available to persons in attendance at meetings of the New York State Cemetery Board.

Rural Area Flexibility Analysis

1. Types and Estimated Number of Rural Areas: Eleven of the 84 pet cemeteries regulated by the Division of Cemeteries are located in rural areas.

2. Reporting, Recordkeeping, and other Compliance Requirements and Professional Services: All 84 pet cemeteries would be required to comply with these regulations and conform their operations and recordkeeping to them. New records - consumer disclosure forms - would be provided by the pet cemeteries and pet cemeteries would keep copies of these forms in their files.

3. **Costs:** Most of the regulation requires a change in procedure that involves little or no cost to pet cemeteries. By setting forth the specific procedure by and circumstances under which a pet cemetery may accept human cremated remains (“cremains,” defined in Not-For-Profit Corporation Law § 1502(i)), for interment, this regulation will allow pet cemeteries to inter cremains, something they currently are prohibited from doing. Such interment previously had been considered to be in conflict with both the purpose of pet cemeteries and the purpose of cemeteries formed under Not-For-Profit Corporation Law Article 15. The consumer disclosure forms would ensure that a person contracting for the interment of cremains and the person arranging for such interment will know and understand that a pet cemetery is not the same as a human cemetery and does not offer the decedent and his/her survivors the same rights and protections offered by a human cemetery.

4. **Minimizing Adverse Impact:** This regulation will not have an adverse impact on pet cemetery operations and will permit the interment of cremains under very limited and strict circumstances. This regulation will maintain the critical legal and regulatory distinction between pet cemeteries and human cemeteries.

5. **Rural Area Participation:** The process of drafting this regulation was an open process. The text of draft proposed regulations was read publicly at New York State Cemetery Board meetings. Affected organizations such as the New York State Association of Cemeteries, the International Association of Pet Cemeteries and Crematories, and the Funeral Consumers Alliance of L.I./NYC were made aware that the draft proposed regulations were on the agenda of the Cemetery Board, were provided copies of the regulation and were offered an opportunity to provide input.

Job Impact Statement

A Job Impact Statement is not required because it is evident from the nature and purpose of this regulation that it would neither create nor eliminate employment positions and/or opportunities and therefore would have no adverse impact on jobs or employment opportunities in New York State.

New York State Thruway Authority

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Thruway Authority publishes a new notice of proposed rule making in the *NYS Register*.

Toll Rate Adjustments on the New York State Thruway System

I.D. No.	Proposed	Expiration Date
THR-25-12-00013-P	June 20, 2012	August 18, 2013