# 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 Environmental Conservation

### NOTICE OF ADOPTION

**Hunting with Crossbows**

**I.D. No.** ENV-22-14-00015-A
**Filing No.** 706
**Filing Date:** 2014-08-11
**Effective Date:** 2014-08-27

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

***Action taken:*** Amendment of Parts 1 and 2 of Title 6 NYCRR.

***Statutory authority:*** Environmental Conservation Law, sections 11-0303, 11-0713, 11-0901, 11-0907, 11-0929 and 11-0933

***Subject:*** Hunting with crossbows.

***Purpose:*** To authorize use of a crossbow during certain big and small game hunting seasons.

***Text of final rule:*** Amend subdivision 6 NYCRR 1.11(d) as follows:

(d) Other requirements.

(1) During the regular season in Westchester and Suffolk Counties, white-tailed deer may only be taken by longbow.

(2) During all seasons in Wildlife Management Units 4J and 8C, white-tailed deer may only be taken by longbow.

(3) During the youth firearms season, junior bowhunters, hunting pursuant to a junior bowhunting license, may only take deer by longbow. Junior hunters, hunting pursuant to a junior hunting license, may take deer with a firearm [or crossbow].

(4) During the youth firearms season, junior hunters may take only one deer, of either sex, by use of a firearm.

(5) *Any youth participating in the youth firearms season shall be accompanied by an adult as required by Environmental Conservation Law § 11-0929. An adult who is accompanying a junior hunter during the youth firearms season, may not possess a firearm, longbow or crossbow and shall not be actively engaged in any other hunting.*

[(5)]*(6)* It is unlawful for any person to hunt or take a deer during the muzzleloading deer season except with a muzzleloading firearm capable of being loaded with only one charge *or a crossbow*.

[(6)]*(7)* During the Northern Zone muzzleloading season, the types of deer that may be legally harvested, the open Wildlife Management Units (WMUs) as described in section 4.1 of this Part are as set forth below.

| | Open WMUs for harvest of deer of either sex | Open WMUs for harvest only of antlerless deer or deer having both antlers less than three inches in length | Open WMUs for harvest of antlered deer only |
|---|---|---|---|
| Early Muzzleloader | 5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J, 6K | | 6N |
| Late Muzzleloader | 5A, 5G, 5J, 6A, 6C, 6G, 6H | | |

Amend subdivision 6 NYCRR 1.30 (b) as follows:

(b) General Provisions. The provisions of this section shall apply to the taking of antlerless deer, as described below in subdivision 1.30(e), by longbow, *crossbow,* muzzleloader or firearm pursuant to a DMAP as provided by Environmental Conservation Law (ECL) section 11-0903, subdivision 11. The general provisions contained in articles 11 and 71 of the ECL, except as otherwise noted herein, relating to hunting hours, the manner of taking, tagging, possession, transporting, reporting and other hunting regulations, shall apply to the hunting and taking of antlerless deer pursuant to this section.

Amend subparagraph 6 NYCRR 1.31 (b)(3)(i) and (ii) as follows:

(i) Any person who hunts or takes bear during bowhunting season must possess a license and carcass tag valid to hunt big game granting special bowhunting season privileges*, except as described in subparagraph 2.3(e)(3)(iv) of this title*.

(ii) Any person participating in the bowhunting bear hunting season may not have in his or her possession, or be accompanied by a person who has in his or her possession, any hunting implement other than a legal longbow*, except as described in subparagraph 2.3(e)(3)(iii) of this title*.

Amend subparagraph 6 NYCRR 1.40 (c)(3)(ii) as follows:

(ii) Supervision. Any youth participating in the spring youth hunt for wild turkey shall be accompanied by an adult as required by Environmental Conservation Law § 11-0929. An adult who is accompanying a youth hunter pursuant to this section shall possess a valid hunting license and turkey permit. An adult who is accompanying a youth hunter may call for and otherwise assist the youth hunter, but shall not carry a firearm*, crossbow,* or longbow or kill a wild turkey during the youth hunt.

Amend paragraph 6 NYCRR 1.40 (f)(2) as follows:

(2) A permittee may hunt turkey with a long, recurve or compound bow *or crossbow*.

Amend 6 NYCRR, Part 2, entitled "More Than One Species," as follows:

Delete heading above Section 2.1 of 6 NYCRR Part 2, which reads "Deer and Bear".

Repeal existing section 6 NYCRR 2.3 and adopt a new section 2.3 as follows:

*2.3 Hunting with a crossbow.*

*(a) Definitions.*

*(1) "Crossbow" means a bow and string, either compound or*

*recurve, that launches a bolt or arrow, mounted upon a stock with a trigger that holds the string and limbs under tension until released.*

*(2) "Crossbow Certificate of Qualification" means a certificate, as provided by the Department of Environmental Conservation (DEC or department), signed by the hunter that will be using a crossbow, certifying that he or she has satisfied the department's legal requirements for crossbow training.*

*(b) Purpose. The provisions of this section shall apply to the taking of deer, bear, small game and upland game birds by crossbow pursuant to sections 11-0713, 11-0901, 11-0907, 11-0929 and 11-0933 of the Environmental Conservation Law.*

*(c) Specifications.*

*(1) Crossbows must have a minimum limb width of seventeen inches when uncocked and measured from the outer limb tips and a minimum length of twenty-four inches measured from the butt-stock to the front of the limbs.*

*(2) The peak draw weight shall be a minimum of one hundred pounds and a maximum of two hundred pounds.*

*(3) Crossbow triggers must have a working safety.*

*(4) Crossbow bolts or arrows must be a minimum of fourteen inches, not including the point or broadhead.*

*(d) Training. Hunters may use a crossbow to hunt wildlife, or act as a mentor for a junior hunter using a crossbow, only after they have completed training that includes at a minimum instruction in the types and parts of a crossbow, cocking and uncocking the crossbow, proper holding and use while afield, and effective shooting range. Such training shall be completed either through:*

*(1) a Standard Hunter Education course offered by DEC on or after April 1, 2014; or*

*(2) a DEC-approved on-line or other training program in the safe use of hunting with a crossbow and responsible crossbow hunting practices. The department shall post on DEC's website, and in the New York State Hunting and Trapping Regulations Guide, requirements and directions for completing crossbow training. After completion of the training, the hunter and any mentor must complete and sign a crossbow certificate of qualification provided by the department. Hunters or mentors who have not attended a Standard Hunter Education course on or after April 1, 2014 must carry this signed self-certification in the field when hunting with a crossbow as proof of compliance.*

*(e) Hunting with a crossbow.*

*(1) Crossbows may only be used by hunters 14 years of age or older.*

*(2) Small game and upland game birds (including wild turkey) may be taken with a crossbow in accordance with the provisions of sections 1.40, 2.20 and 2.25 of this title, except that crossbows may not be used in Nassau, Suffolk, or Westchester counties.*

*(3) Deer and bear may be taken with a crossbow in accordance with the provisions of sections 1.11 and 1.31 of this title and the following:*

*(i) Crossbows may be used to take deer during the regular and muzzleloader seasons in the Northern Zone and during the regular and late muzzleloader seasons in the Southern Zone, as described in Section 1.11 of this title.*

*(ii) Crossbows may be used to take bear during the early and regular bear seasons in the Northern and Southern bear ranges, during the early muzzleloading season in the Northern bear range, and during the late muzzleloading season in the Southern bear range, as described in Section 1.31 of this title.*

*(iii) Crossbows may be used to take deer or bear during the last ten days of the early bowhunting season in the Northern Zone (same as Northern bear range) and during the last fourteen days of the early bowhunting season in the Southern Zone (same as Southern bear range).*

*(iv) Hunters must possess a muzzleloading hunting privilege to hunt deer or bear with a crossbow during any muzzleloader season or during open portions of the early bowhunting seasons.*

Amend subparagraph 6 NYCRR 2.25 (b)(3)(i) as follows:

(i) Eligibility. In addition to the open seasons set forth in this subdivision, licensed junior hunters (12-15 years of age), accompanied by an adult in accordance with section 11-0929 of the Environmental Conservation Law, may take pheasants on special Youth Pheasant Hunting Days, as specified in this paragraph. Any adult who is accompanying a youth hunter pursuant to this section shall possess a valid hunting license, but shall not carry a firearm*, crossbow* or longbow or kill a pheasant during the youth hunt.

***Final rule as compared with last published rule:*** Nonsubstantive changes were made in section 2.3(e)(2).

***Text of rule and any required statements and analyses may be obtained from:*** Bryan Swift, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY, 12233-4754, (518) 402-8833, email: WildlifeRegs@dec.ny.gov

***Revised Regulatory Impact Statement***

The change made to the text of the adopted rule involved a technical correction, removal of the word "mammal" when referencing hunting small game with a crossbow in 6 NYCRR 2.3 (e)(2). The original Regulatory Impact Statement as published in the Notice of Proposed Rule Making remains valid, and does not need to be amended to reflect the changes made to the text of the regulation.

***Revised Regulatory Flexibility Analysis***

The change made to the text of the adopted rule involved a technical correction, removal of the word "mammal" when referencing hunting small game with a crossbow in 6 NYCRR 2.3 (e)(2). The original Regulatory Flexibility Analysis for Small Businesses and Local Governments as published in the Notice of Proposed Rule Making remains valid, and does not need to be amended to reflect the changes made to the text of the regulation.

***Revised Rural Area Flexibility Analysis***

The change made to the text of the adopted rule involved a technical correction, removal of the word "mammal" when referencing hunting small game with a crossbow in 6 NYCRR 2.3 (e)(2). The original Rural Area Flexibility Analysis as published in the Notice of Proposed Rule Making remains valid, and does not need to be amended to reflect the changes made to the text of the regulation.

***Revised Job Impact Statement***

The change made to the text of the adopted rule involved a technical correction, removal of the word "mammal" when referencing hunting small game with a crossbow in 6 NYCRR 2.3 (e)(2). The original Job Impact Statement as published in the Notice of Proposed Rule Making remains valid, and does not need to be amended to reflect the changes made to the text of the regulation.

***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 2019, which is no later than the 5th year after the year in which this rule is being adopted.

***Assessment of Public Comment***

This rule making was necessary to implement provisions of legislation enacted as part of the NYS budget bill on March 31, 2014. The Department of Environmental Conservation (DEC or department) received approximately 500 public comments which almost universally focused on the writer's support or opposition to use of crossbows during bowhunting seasons for deer. DEC also received roughly 4,900 form letters organized by In Defense of Animals that requested crossbows be banned for hunting in New York, an action that was contrary to the intent of the legislation and outside the scope of this rule making.

A summary of the substantive comments and the department's response follows:

Comment: Many writers expressed support for the renewed crossbow authorization with most of those also suggesting that crossbows should be allowed during the entire bowhunting season for deer. Some indicated that the regulation should allow all permanently disabled hunters, hunters who are unable to draw a legal bow, junior hunters, hunters who are 65 years of age or older, hunters who have a certified physician's statement regarding their disability, or hunters who obtain authorization to use a modified long bow, to use a crossbow in any season. Several writers offered alternative season or tag structures to accommodate crossbow use for deer hunting or indicated that crossbows should be allowed during the Youth Deer Hunt weekend.

Response: The new legislation (ECL § 11-0907 subdivision 10) specifically set the allowable seasons for crossbow use and explicitly defined the minimum age for crossbow use and the circumstances under which a crossbow may be used. The department is obligated to adopt regulations in accordance with the law as written, and the proposed rule authorized use of crossbows to the maximum extent allowed by the Legislature. The department's position on crossbow use for deer hunting is stated in Appendix 5 of the NYS Deer Management Plan (www.dec.ny.gov/docs/wildlife__pdf/deerplan2012.pdf) and recommends legalizing use of crossbows by all hunters during any season in which other bowhunting equipment can be used.

Comment: Other writers opposed the use of crossbow as a legal hunting implement, particularly during any portion of the early bowhunting season for deer. They stated that crossbows should only be allowed in a gun or muzzleloading season.

Response: DEC believed that it was necessary to adopt regulations authorizing the use of crossbows to the maximum extent allowed by the new law to be consistent with the Legislative intent.

Comment: More rigorous training should be required of all persons who hunt with a crossbow. Hunters who may have already completed the basic hunter education courses should, before hunting with a crossbow, also be trained in practical shot selection, proper shot placement, and the difference between taking an animal with an arrow and broadhead versus a bullet, as is taught in the bowhunter education course.

Response: The new legislation requires the department to incorporate training on safe practices for hunting with a crossbow into the basic hunter education course required of all new hunters. The legislation also requires that all hunters who have completed a hunter education course prior to April 1, 2014 must complete an online or other training program approved by the department. DEC has made information on crossbow hunting safety available on its website (www.dec.ny.gov/outdoor/7860.html) and in the annual hunting and trapping regulations syllabus (www.dec.ny.gov/outdoor/37136.html). In addition, DEC will begin to incorporate crossbow training into the bowhunter education course for all new bowhunters. We expect that many users of crossbows will be experienced bowhunters, and that most will seek out information and practice shooting a crossbow before going afield to increase their chances for a successful hunt.

Comment: Crossbows should be allowed in Westchester County, Long Island, WMU 4J in Albany County and WMU 8C in Monroe County, areas with high deer densities.

Response: DEC agrees. However, areas excluded for crossbow use were specified in legislation. Crossbows are another tool that could be useful in these areas for hunters to assist communities, landowners and wildlife managers in efforts to reduce abundant deer populations.

Comment: Hunters should not be required to have a muzzleloader privilege to hunt with a crossbow during the early bow season. This will create confusion. Crossbow use should be covered under a bow license.

Response: The license requirement for crossbow use was specified in legislation, and DEC could not modify this requirement. DEC will include information in the annual hunting regulations guide and on DEC's website to alert hunters of the requirements of the new law.

Comment: Minimum draw weights make sense, but there should either be no maximum draw weight or a much higher maximum limit. The 200 pound maximum excludes many traditional crossbows. Minimum limb width dimensions should be reduced to accommodate smaller-framed hunters and reverse limb crossbows.

Response: Crossbow dimensions and draw weights were specified in legislation and DEC could not relax these specifications.

Comment: Several writers offered contrasting opinions on the practical use of crossbows. Some suggested that crossbows are more accurate and will result in fewer wounded deer. Others suggested that hunters will take longer shots at deer, and likely wound more deer.

Response: DEC is not aware of any empirical evidence that use of crossbows will affect wounding or recovery rates in any measurable way. Experiences in other jurisdictions where crossbows are legal suggest similar deer recovery rates by hunters who used compound bows and those who used crossbows.

Comment: Legalizing hunting with crossbows will increasing poaching.

Response: While not previously a legal hunting implement, crossbows were previously legal to own in New York. The department does not anticipate any increase in illegal poaching due to allowance of lawful hunting with crossbows.

Comment: Use of crossbows is a safety hazard to other hunters because hunters will be inexperienced, poorly trained and capable of carrying their crossbows with limbs cocked and an arrow nocked.

Response: Sportsmen who use a crossbow to hunt in New York will need to abide by the same rules, regulations and safety practices set forth in the ECL and annual hunting regulations guide while transporting and while afield with a crossbow. As mentioned above, even hunters who completed a hunter education course prior to April 1, 2014 will be required to complete an online or other training program approved by the department. Many people who commented in support of the proposed rule indicated that they were experienced bowhunters who appreciated the opportunity to use a new implement for deer hunting. Furthermore, experience in other jurisdictions where crossbows are legal reveal that hunters with crossbows and vertical bows have similar safety records.

Note: In addition to public comments that were received, the department recognized that the proposed rule needed a technical correction to 6 NYCRR 2.3(e)(2). To be consistent with the law, this correction has removed the word "mammal" when referencing small game. The law refers only to small game, which also includes frogs and turtles in the ECL.

# Department of Financial Services

## EMERGENCY RULE MAKING

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

**I.D. No.** DFS-34-14-00001-E
**Filing No.** 700
**Filing Date:** 2014-08-06
**Effective Date:** 2014-08-07

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

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

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

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

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

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

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

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

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

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

***Purpose:*** The revised rules implement new Article 12-E of the Banking Law to require that individuals engaging in mortgage loan origination activities must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks). Revised Part 420 sets forth the application, exemption and approval procedures for initial and annual licensing as a mortgage loan originator. Revised Supervisory Procedure MB 107 sets forth the details of the application procedure. Supervisory Procedure MB 108 set forth the procedure for approval of education courses and providers under the prior version Article 12-E. It no longer is required under the new article 12-E.

***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 3, 2014.

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

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

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

Section 599-j sets forth the continuing education requirements for MLOs, and Section 599-k sets forth the requirements for a surety bond. Section 599-l requires the Superintendent to report through the NMLS at least annually on all violations of Article 12-E and all enforcement actions. MLOs may challenge the information contained in such reports. Section 599-m sets forth the records and reports that originating entities must

maintain or make on MLOs employed by, or working for, such entities. This section also requires the Superintendent to maintain on the internet a list of all MLOs licensed by the Department and requires reporting to the Department by MLOs.

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

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

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

2. Legislative Objectives.

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

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

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

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

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

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

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

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

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

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

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

3. Needs and Benefits.

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

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

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

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

4. Costs.

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

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

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

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

7. Duplication.

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

8. Alternatives.

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

9. Federal Standards.

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

10. Compliance Schedule.

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

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

***Regulatory Flexibility Analysis***

1. Effect of the Rule:

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

2. Compliance Requirements:

The revised regulation reflects the changes made in revised Article 12-E of the Banking Law. The small businesses that MLOs are employed by or affiliated with will be required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for actual or alleged violations, determine that each MLO employed by or affiliated with them has the character, fit-

ness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. In addition to these requirements, originating entities will be required to assign MLOs to registered locations and to ensure that an MLO's unique identifier is recorded on each mortgage application he or she originates.

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

See response to Item 6 above.

***Rural Area Flexibility Analysis***

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

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

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

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

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

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

***Job Impact Statement***

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

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

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

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

## EMERGENCY RULE MAKING

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

**I.D. No.** DFS-34-14-00002-E

**Filing No.** 705

**Filing Date:** 2014-08-11

**Effective Date:** 2014-08-11

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

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

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

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

***Specific reasons underlying the finding of necessity:*** Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that, if committed without just cause and performed with such frequency as to

indicate a general business practice, will constitute unfair claims settlement practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe to settle claims properly.

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

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

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

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

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

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

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

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

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

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

*(2) loss of or damage to personal property, other than damage to a motor vehicle.*

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

*(i) at the time the insurer denies a claim in whole or in part;*

*(ii) within 10 business days of the date that the insurer receives notification from a claimant that the claimant disputes a settlement offer made by the insurer, provided that the difference between the positions of the insurer and claimant is $1,000 or more; or*

*(iii) within two business days when the insurer has not offered to settle within 45 days after it has received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***This notice is intended*** to serve only as a notice of emergency adoption.

This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 8, 2014.

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

***Regulatory Impact Statement***

1. Statutory authority: Sections 202 and 302 of the Financial Services Law and Sections 301 and 2601 of the Insurance Law. Financial Services Law § 202 grants the Superintendent of Financial Services ("Superintendent") the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by the Financial Services Law or any other applicable law of this state. Insurance Law § 301 and Financial Services Law § 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent in the Insurance Law. Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices, sets forth certain acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, constitute unfair claims settlement practices, and imposes penalties if an insurer engages in these acts. Such practices include "not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear" and "compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them."

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

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

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

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

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

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

4. Costs: This rule does not impose compliance costs on state or local governments. The rule may increase costs for insurers, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers should also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

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

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

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

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

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

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

***Regulatory Flexibility Analysis***

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

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

***Rural Area Flexibility Analysis***

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

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule would not impose any additional reporting

or recordkeeping requirements. However, the rule would impose other compliance requirements on insurers that may be headquartered in rural areas by requiring insurers to participate in mediation sessions when an insured with a claim subject to the rule requests mediation of his or her claim.

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

3. Costs: The rule may result in additional costs to insurers headquartered in rural areas, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers may also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

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

5. Rural area participation: Public and private interests in rural areas have had a continual opportunity to participate in the rule making process since the first publication of the emergency measure in the State Register on March 13, 2013, which was published again in the State Register on June 4, 2014. The emergency measure also has been posted on the Department's website continually since March 13, 2013.

***Job Impact Statement***

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

## NOTICE OF ADOPTION

### Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves

**I.D. No.** DFS-20-14-00009-A
**Filing No.** 708
**Filing Date:** 2014-08-11
**Effective Date:** 2014-08-27

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

***Action taken:*** Amendment of Part 99 (Regulation 151) of Title 11 NYCRR.

***Statutory authority:*** Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1304, 4217 and 4517

***Subject:*** Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves.

***Purpose:*** To adopt NAIC Individual Annuity Reserving Table.

***Text or summary was published*** in the May 21, 2014 issue of the Register, I.D. No. DFS-20-14-00009-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** Jennifer Roig, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-7929, email: jennifer.roig@dfs.ny.gov

***Initial Review of Rule***

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

***Assessment of Public Comment***

The agency received no public comment.

## NOTICE OF ADOPTION

### Regulations Governing an Actuarial Opinion and Memorandum

**I.D. No.** DFS-23-14-00003-A
**Filing No.** 709
**Filing Date:** 2014-08-11
**Effective Date:** 2014-08-27

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

***Action taken:*** Amendment of Part 95 (Regulation 126) of Title 11 NYCRR.

***Statutory authority:*** Financial Services Law, sections 202 and 302; Insurance Law, sections 107, 301, 308, 301, 1301, 1303, 1304, 4217, 4232 and 4240

***Subject:*** Regulations Governing an Actuarial Opinion and Memorandum.

***Purpose:*** To correct unintended revision to section 95.8(b)(6)(vi) made by last amendment to this rule.

***Text or summary was published*** in the June 11, 2014 issue of the Register, I.D. No. DFS-23-14-00003-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** Jennifer Roig, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-7929, email: jennifer.roig@dfs.ny.gov

***Assessment of Public Comment***

The agency received no public comment.

# New York Gaming Facility Location Board

## EMERGENCY RULE MAKING

### Rule Pertaining to the Minimum Capital Investment for a Gaming Facility License That Must be Part of a Request for Application

**I.D. No.** GFB-21-14-00009-E
**Filing No.** 704
**Filing Date:** 2014-08-08
**Effective Date:** 2014-08-27

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

***Action taken:*** Addition of Part 602 to Title 9 NYCRR.

***Statutory authority:*** Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(5), (9) and 1315(1)

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

***Specific reasons underlying the finding of necessity:*** The New York State Gaming Facility Location Board (the "Board") has determined that immediate adoption of this rule is necessary for the preservation of the general welfare. On March 31, 2014, the Board, which was established by the New York State Gaming Commission, issued a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in Upstate New York. The immediate re-adoption of this rule is necessary to prescribe the minimum investment information for applicants who submitted an application in response to the RFA to the Board on June 30, 2014. Standard rule making procedures would prevent the Board from commencing the fulfillment of its statutory duties.

***Subject:*** Rule pertaining to the minimum capital investment for a gaming facility license that must be part of a request for application.

***Purpose:*** To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

***Text of emergency rule:*** Subtitle R of Title 9, Executive, of the NYCRR is amended to add a new Part 602 as follows:

*PART 602*

*CAPITAL INVESTMENT*

*§ 602.1. Gaming Facility Minimum Capital Investment.*

*The minimum capital investment for a gaming facility by zone and region shall be:*

*(a) In Zone Two, Region One (Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law:*

*(1) $350,000,000 for a gaming facility in Dutchess or Orange Counties;*

*(2) $130,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if no license is awarded for a gaming facility located in Dutchess or Orange Counties; and*

*(3) $100,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if a license is awarded for a gaming facility located in Dutchess or Orange Counties.*

*(b) $135,000,000 in Zone Two, Region Two (Counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law.*

*(c) In Zone Two, Region Five (Counties of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins, and Wayne (east of State Route 14)), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:*

*(1) $85,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties;*

*(2) $135,000,000 for a gaming facility in Wayne or Seneca Counties; and*

*(3) $70,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties, if a license is awarded for a gaming facility located in Wayne or Seneca Counties.*

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. GFB-21-14-00009-EP, Issue of May 28, 2014. The emergency rule will expire October 6, 2014.

***Text of rule and any required statements and analyses may be obtained from:*** Corey Callahan, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301-7500, (518) 388-3408, email: sitingrules@gaming.ny.gov

***Regulatory Impact Statement***

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 1306(5) and section 1315(1) prescribe that the Gaming Facility Location Board, which is established by the Commission, shall establish the minimum capital investment for an applicant seeking a license to develop and operate a gaming facility in New York State. Racing Law 1306(9) authorizes the Board to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. LEGISLATIVE OBJECTIVES: This rule making carries out the legislative objectives of the above referenced statutes by implementing the requirements of Racing Law section 1306(5) and section 1315(1).

3. NEEDS AND BENEFITS: This rule making is necessary to enable the Gaming Facility Location Board to carry out its statutory duty to prescribe the minimum capital investment for a gaming facility. The Gaming Facility Location Board released the request for applications ("RFA") on March 31, 2014, and applicants submitted completed applications on June 30, 2014.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs, including the application fee, the fee for the gaming facility license and the capital investment necessary to construct and operate a gaming facility.

(b) Costs to the regulating agency, the State, and local government: The rule will impose some costs on the Board to review gaming facility license applications and to conduct hearings, where necessary. The Board will rely on Gaming Commission staff to assist in these matters and the costs to the Gaming Commission are expected to be defrayed by the license fee and the $1 million application fee that each applicant will pay as required by Racing Law section 1316(8). The rule will not impose any additional costs on local government.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Gaming Commission's experience regulating racing and gaming activities within the State.

5. PAPERWORK: The rule is not expected to impose any significant paperwork requirements for gaming facility applicants and licensees.

6. LOCAL GOVERNMENT: The rule does not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. DUPLICATION: The rule does not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Board is required to create this rule under Racing Law sections 1306(5) and 1315(1). Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. COMPLIANCE SCHEDULE: The Board anticipates that affected parties will be able to achieve compliance with the rule upon adoption of the rule, which will occur upon filing.

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

This emergency rule making will not have any adverse impact on small businesses, local governments, jobs, or rural areas. The rule prescribes the minimum capital investment for a gaming facility. It is not expected that any small business or local government will apply for a gaming facility license.

The rule imposes no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rule applies uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in the State.

The rule will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

## NOTICE OF ADOPTION

### Rules Pertaining to Gaming Facility Request for Application and Related Fees and Related Hearings

**I.D. No.** GFB-21-14-00008-A

**Filing No.** 702

**Filing Date:** 2014-08-08

**Effective Date:** 2014-08-27

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

***Action taken:*** Addition of Parts 600 and 601 to Title 9 NYCRR.

***Statutory authority:*** Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(4), (9) and 1319

***Subject:*** Rules pertaining to gaming facility request for application and related fees and related hearings.

***Purpose:*** To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

***Text or summary was published*** in the May 28, 2014 issue of the Register, I.D. No. GFB-21-14-00008-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** Corey Callahan, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301-7500, (518) 388-3408, email: sitingrules@gaming.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 2019, 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

**Rule Pertaining to the Minimum Capital Investment for a Gaming Facility License That Must be Part of a Request for Application**

**I.D. No.** GFB-21-14-00009-A
**Filing No.** 703
**Filing Date:** 2014-08-08
**Effective Date:** 2014-08-27

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

***Action taken:*** Addition of Part 602 to Title 9 NYCRR.

***Statutory authority:*** Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(5) and 1315(1)

***Subject:*** Rule pertaining to the minimum capital investment for a gaming facility license that must be part of a request for application.

***Purpose:*** To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

***Text or summary was published*** in the May 28, 2014 issue of the Register, I.D. No. GFB-21-14-00009-EP.

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

***Text of rule and any required statements and analyses may be obtained from:*** Corey Callahan, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3408, email: sitingrules@gaming.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 2019, 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.

# Department of Health

## EMERGENCY RULE MAKING

**Opioid Overdose Programs**

**I.D. No.** HLT-34-14-00010-E
**Filing No.** 712
**Filing Date:** 2014-08-12
**Effective Date:** 2014-08-12

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

***Action taken:*** Amendment of section 80.138 of Title 10 NYCRR.

***Statutory authority:*** Public Health Law, section 3309

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

***Specific reasons underlying the finding of necessity:*** The regulatory revisions are necessary for emergency implementation to safeguard the lives and well-being of New Yorkers who are otherwise at increasing risk for opioid-associated harm including death.

In New York State substantial mortality is associated with opioids. In 2012, there were 875 deaths where the toxicology reports indicated opioid analgesics. In addition, 478 overdose deaths occurred that year associated with heroin and 150 deaths for which the toxicology report indicated an unspecified opioid. The heroin-related deaths for 2012 represent an almost-threefold increase from two years earlier. Although there are not yet consolidated reports for more recent years, there is reason to believe, based on information shared by local jurisdictions as well as from legislative hearings, that this trend has not only continued, but has grown at an alarming rate.

Similarly, costly hospitalizations in which opioids have been identified among the diagnostic codes have risen substantially. In 2012, there were more than 75,000 hospital discharges in which opioids were identified. This is an increase of approximately 4,000 from four years earlier. Although a broad range of opioid-related diagnoses is represented in these figures, they indicate the growing problem associated with this class of drugs.

There is a broad-based interest in—and commitment to—resolving New York State's opioid crisis. Part of that response includes providing law enforcement and firefighting personnel with the training and the naloxone necessary to save lives when they are the first to arrive on the scene of a suspected overdose. The Division of Criminal Justice Services, working with the Department of Health, Albany Medical Center, the Harm Reduction Coalition, local health departments and other community partners has initiated training of law enforcement officers, with a goal of 5,000 trained in the first year. There have been immediate benefits from these trainings, including overdose reversals successfully carried out within hours of a training. This initiative is currently severely hampered in its implementation by a requirement that each officer have his or her own rescue kit and that the officer cannot share it with colleagues. The revised regulation will address that. The revised regulation allowing for non-patient specific prescriptions of naloxone—something now authorized under the law—will eliminate the de facto requirement that prescribers be physically present every time that naloxone is furnished or dispensed. This will provide immediate relief not only in training public safety personnel, but also for more community-oriented programs, in which prescriber availability is extremely limited.

***Subject:*** Opioid Overdose Programs.

***Purpose:*** Modification of the rule consistent with new statutory language and with the emergency nature of opioid overdose response.

***Substance of emergency rule:*** The regulatory changes accomplish the following:

- authorize clinical directors and affiliated prescribers to prescribe an opioid antagonist to trained overdose responders, and for those prescriptions to be either patient-specific or non-patient-specific;
- require clinical directors to designate those individuals who will be furnishing or dispensing naloxone pursuant to a non-patient specific prescription;
- allow for trained overdose responders to have shared access to, and use of, an opioid antagonist so long as the following conditions are met: they are trained in accordance with the regulations; they have a common organizational or workforce bond; and there are policies and procedures in place within that organization or workforce that ensure orderly, controlled access to an opioid antagonist by an identifiable pool of trained overdose responders;
- expand the organizations which may have regulated opioid overdose prevention programs to include the following: public safety agencies, state agencies and pharmacies;
- add a reporting requirement, so that the Department will know on a quarterly basis how many overdose responders each program trains as well as how many doses of naloxone each program furnishes;
- require public safety and firefighting personnel to have their overdose reversals reported directly to the Department by their agencies;
- require the maintenance and provision of masks or other similar barriers only for those programs which incorporate rescue breathing in their curriculum;
- acknowledge the curriculum approved by the Division of Criminal Justice Services as acceptable for trained overdose responders who are public safety personnel, and acknowledge that a comparable curriculum approved by the Department of Health may be used for firefighters;
- require that registered programs maintain and furnish instructional material to participants, including how to recognize symptoms of an opioid overdose; the steps to be taken in responding to an opioid overdose; and how to access OASAS through both a toll free number and its website;
- require that documentation be furnished at the time naloxone is dispensed pursuant to a non-patient specific prescription that indicates the following: that naloxone has been furnished pursuant to a non-patient specific prescription; the name of the prescriber; the opioid antagonist being prescribed; the date of the furnishing or dispensing; and the name of the person receiving the opioid antagonist; and
- acknowledge that prescribers unaffiliated with registered programs may issue patient-specific prescriptions for an opioid antagonist to individuals in their care at risk of an opioid overdose.

***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 9, 2014.

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

***Regulatory Impact Statement***
Statutory Authority:
Chapter 413 of the Laws of 2005, effective April 1, 2006, added Sec-

tion 3309 of the Public Health Law to provide for opioid overdose prevention programs in New York State (NYS). Pursuant to PHL Section 3309(1), as amended by Chapters 34 and 42 of the Laws of 2014, the Commissioner of Health is authorized to establish standards for approval of opioid overdose prevention programs.

Legislative Objectives:

This legislation was enacted in order to reduce the incidence of fatal opioid overdoses by making possible the timely, appropriate and safe administration of life-saving medication on an emergency basis to individuals who experience opioid drug overdoses. To achieve this objective, the revised regulations address the issuance of non-patient specific prescriptions for an opioid antagonist, something that is permitted for the first time under the 2014 revisions to PHL Section 3309. The regulations also authorize a practice implicit in the statute: the shared access to—and use of—an opioid antagonist by trained overdose responders. To further address the law's objective of reducing the incidence of fatal overdoses, the regulations support a broader range of qualified organizations in becoming registered opioid overdose prevention programs by including public safety agencies, state agencies and pharmacies as eligible organizations. The law and the regulations also mandate that the furnishing or dispensing of naloxone be accompanied by information on recognizing the symptoms of an opioid overdose, on what steps to take in the course of an overdose, on how to access the HOPE Line maintained by the Office of Alcoholism and Substance Abuse Services (OASAS); and on how to access the OASAS web site.

Needs and Benefits:

Overdose is a preventable cause of death in the majority of cases involving opioids. Opioids include heroin as well as prescribed analgesics such as morphine, codeine, methadone, oxycodone (Oxycontin, Percodan, Percocet) and hydrocodone (Vicodin). In an opioid overdose, the user becomes sedated and gradually loses the urge to breathe, leading to death from respiratory depression. Naloxone is an opioid receptor antagonist that can be used to reverse an opioid overdose, generally within 1-2 minutes of administration. An untreated opioid overdose may result in death over the course of 1-3 hours. Approximately half of all injection drug users (IDUs) experience at least one nonfatal overdose during their lifetime.

According to the Centers for Disease Control and Prevention (CDC) drug overdose deaths are now the leading cause of accidental death in the United States for people aged 25-64, Of the 22,134 deaths relating to prescription drug overdose nationally in 2010, 16,651 (75%) involved opioid analgesics (also called opioid pain relievers or prescription painkillers). In 2011, drug misuse and abuse caused about 2.5 million emergency department (ED) visits. Of these, more than 1.4 million ED visits were related to pharmaceuticals.

In New York State, substantial mortality is associated with opioids. In 2012, there were 875 deaths where the toxicology reports indicated opioid analgesics. In addition, 478 overdose deaths occurred that year associated with heroin and 150 deaths for which the toxicology report indicated an unspecified opioid.

OASAS estimates that there are approximately 200,000 heroin users in New York State. In 2009, there were 14,010 treatment admissions with a primary diagnosis pertaining to a prescription opioid pain reliever and 27,496 for any diagnosis (primary, secondary or tertiary) pertaining to a prescription opioid pain reliever.

Most overdoses are not instantaneous and the majority of them are witnessed by others. Therefore, many overdose fatalities are preventable. Prevention measures include education on risk factors (such as polydrug use and recent abstinence), recognition of the overdose and an appropriate response. Response includes contacting emergency medical services (EMS) and providing resuscitation while awaiting the arrival of EMS. Resuscitation may also include the administration of naloxone which immediately reverses the effects of an opioid overdose. Naloxone is an opioid antagonist with no abuse potential and no effect on a recipient who has not taken opioids. Provision of naloxone has been recommended for many years and is being offered in a variety of settings in a growing number of jurisdictions throughout the United States. Complications of naloxone in the medical setting are rare.

Opioid overdose prevention programs, including those regulated by the current regulation, have proven effective in preventing unnecessary deaths. As of June 30, 2014, over 140 programs have registered as Overdose Prevention Providers and over 75,000 naloxone kits have been distributed by NYSDOH. As of that same date, there were 918 reports of overdose reversals with the naloxone kits. Seventy-one percent of the people who received naloxone because of a drug overdose were between the ages of 18-45; the vast majority had injected heroin; and frequently opioids were used in combination with alcohol and other drugs. The largest number of reversals have been reported from New York (Manhattan) (208, 22.7%), Erie (175, 19.1%) and Bronx (157, 17.1%) counties.

The amendment to the rule achieves the following: 1) health care providers are authorized to issue patient specific and non-patient specific prescriptions for naloxone; 2) in instances when regulated programs will be using non-patient specific prescriptions for naloxone, the clinical director must delegate those individuals who will be carrying out the dispensing; 3) shared access to—and use of—naloxone among trained overdose responders is now permitted so long as: a) these responders are trained in accordance with the regulations; b) there is a common organizational or workforce bond among them; and c) there are policies and procedures in place within that organization or workforce that ensure orderly, controlled access to an opioid antagonist by an identifiable pool of trained overdose responders; 4) provider eligibility has been expanded to include public safety agencies, state government agencies and pharmacies; 5) registered programs will now be required to report on a quarterly basis the number of doses provided to trained overdose responders and the number of responders trained; and 6) all naloxone distribution is to be accompanied by information on how to recognize an opioid overdose, how to respond to an opioid overdose; and how to access OASAS, both through its HOPE Line as well as through its web site.

These changes under the proposed regulations will result in improved distribution of naloxone in the community and result in reduced incidence of fatal opioid overdoses. The reporting requirement will give the State an improved understanding of the impact of this program. Expanded access to naloxone does not lead to increased drug use. Naloxone is not addictive and does not cause a "high." It has no potential for abuse, nor does it have a street value associated with diversion.

Costs:

There are no new mandates. This regulation continues to allow, not require, creation of opioid overdose prevention programs. Costs for the implementation and ongoing operations of regulated programs to those parties that elect to establish them will continue to be minimal. As was past practice, no registration fee is being collected. A one-time, application process remains in effect in order for an opioid overdose prevention program to receive a certificate of approval. Existing staff can serve as the regulated program's Program Director. Internal operational policies and procedures, as well as the training of staff, remain as requirements. Reporting requirements are minimal and consistent with Public Health Law.

The State has appropriated and is making funding available for the following activities. The Department of Health estimates that approximately 48,000 individuals will become trained overdose responders between April 1, 2014 and March 31, 2015 at an estimated annual cost $3,000,000 for the kits. Training costs will be covered with existing resources within the Department of Health budget. The amount for subsequent years will decrease considerably, in part because of the accrued benefit of train-the-trainer sessions. The estimated annual cost in the years subsequent to the 2014-2015 State Fiscal Year is likely to range between $1,000,000 and $2,000,000. All of these costs are borne with State funding. There is no local funding used for this initiative.

Local Government Mandates:

For purposes of implementing amendments to Section 3309 of the Public Health Law, local government agencies will be made aware of the option to voluntarily offer opioid overdose prevention programs, though in no case is participation in this program mandated. Local EMS will continue to receive information concerning opioid overdose prevention.

Paperwork:

The NYSDOH anticipates a continued simple and streamlined process for eligible organizations to obtain a certificate of approval to establish an opioid overdose prevention program. The record keeping and reporting requirements imposed on the programs are minimal. Only those providers voluntarily participating will be required to provide information to the Department.

Duplication:

The proposed amendments to the regulation do not duplicate any existing state or federal law or regulation regarding opioid overdose prevention.

Alternatives:

The proposed amendments to the regulation do not exceed the specific requirements of the legislation. Because offering an opioid overdose prevention program is voluntary, the regulation was designed to encourage eligible individuals and organizations to provide opioid overdose prevention services allowed under law and regulation. The approval process continues to be simple; and the reporting and financial impact of establishing a voluntary opioid overdose prevention program remains minimal. Any other alternatives would require a more complex and more costly approach for both the NYSDOH and volunteer operators of opioid overdose prevention programs.

Federal Standards:

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

Compliance Schedule:

Each individual or organization that chooses to establish an opioid overdose prevention program must submit an initial application to the

Department. Information on approved programs is then used to develop a listing of opioid overdose prevention programs, which is shared with the public. Applications for approval to establish opioid overdose prevention programs will continue to be accepted on an ongoing basis, with review and renewal happening at two-year intervals.

***Regulatory Flexibility Analysis***

Effect of Rule:

The proposed rule will have minimal impact on small businesses and local governments. The principal goal of the regulatory changes is to ensure improved access to naloxone in the community by allowing non-patient specific prescriptions of naloxone and shared access to—and use of—naloxone by trained overdose responders under specified conditions. The proposed rule also allows for the following additional eligible providers to maintain regulated overdose programs: public safety agencies, state agencies and pharmacies. None of those entities would be required to maintain an overdose prevention program; rather they may voluntarily choose to have such a program. The minimal impact on small businesses and local governments is underscored by the modest nature of opioid overdose prevention programs; no fee is required for approval, ongoing technical assistance is provided at no cost by the Department of Health to these programs, and recordkeeping and reporting are minimal.

Compliance Requirements:

Under the proposed rule, eligible providers that elect to establish opioid overdose prevention programs will continue to report overdose reversal on forms provided by the NYSDOH. There is an additional requirement mandating that the regulated programs report to the Department on a quarterly basis the number of doses of naloxone provided to trained overdose responders as well as the number of responders trained. Record keeping mandated of programs is minimal.

Offering of opioid overdose prevention programs remains entirely voluntary.

Professional Services:

No additional professional services will be required since providers and others will be able to utilize existing staff or can utilize the services of others with whom they have a relationship.

Compliance Costs:

There are no additional costs associated with non-patient specific prescriptions for naloxone nor for the shared access to—and use of—naloxone. In fact, the shared access to naloxone may reduce the burden on organizations whose staff are being trained in opioid overdose.

The additional organizations under the revised regulations that are eligible to operate opioid overdose prevention programs and that seek NYSDOH approval to establish these programs will be provided with application guidelines and technical assistance. The additional organizations are public safety agencies, state agencies and pharmacies. Reporting requirements pertaining to opioid overdose prevention programs will be minimal for those providers that voluntarily elect to establish such opioid overdose prevention programs. The estimated cost of reporting is, at most, $150 per year.

Economic and Technological Feasibility:

Most health care practitioners and organizations that are, or would be, eligible to offer opioid overdose prevention programs have the capacity and expertise to carry out the necessary activities. Small businesses that opt to voluntarily offer opioid overdose prevention programs will be provided with necessary forms and instructions to comply with the approval process and reporting requirements. In large part, these forms and instructions are developed with specific input from regulated parties and NYSDOH resources are being made available to provide instructions and technical assistance.

Minimizing Adverse Impact:

There are no alternatives to the proposed recordkeeping and reporting requirements. NYSDOH has a responsibility to ensure that approved opioid overdose prevention programs conduct activities in a manner that maximizes the impact of this program. It also has a responsibility to collect information consistent with the reports to the Governor and the Legislature that are mandated in Section 3309(5) of the Public Health Law.

Small Business and Local Government Participation:

Small businesses (including small business hospitals, clinics, health care practitioners, drug treatment programs, individual practitioners, and community-based organizations) as well as local health departments had an opportunity to review and comment on the original regulations as well as on subsequent proposed changes. A similar opportunity is being provided with respect to the changes in the regulations now being proposed, particularly with non-patient specific prescriptions for naloxone and shared access to—and use of—naloxone by trained overdose responders. The Department has already begun to have conversations with public safety agencies and some registered programs regarding these issues. There will also be discussions with pharmacies and state agencies that are now eligible to maintain registered programs.

***Rural Area Flexibility Analysis***

Types and Estimated Number of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, include towns with population densities of 150 persons or less per square mile. There are 43 counties in NYS with a population less than 200,000. Eleven counties have certain townships with population densities of 150 persons or less per square mile. The proposed rule will have minimal impact on practitioners, organizations, local governments and pharmacies in these rural areas.

The additional organizations under the revised regulations that are eligible to operate opioid overdose prevention programs are public safety agencies, state government and pharmacies. In rural areas, those entities most likely to be represented among new registrants are public safety agencies and pharmacies. Registration as an opioid overdose prevention program is entirely voluntary.

Potential providers are most likely to be located in urban or suburban, not rural, areas.

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

Under the proposed regulations, reporting, record keeping and other compliance requirements applicable to providers that seek Department approval to offer opioid overdose prevention programs are minimal. There is a new reporting requirement that registered programs on a quarterly basis inform the Department of the number of doses of naloxone provided to trained overdose responders as well as the number of responders trained. These data are essential for the Department to be compliant with mandated reports to the Governor and the Legislature.

Costs:

The Department, either directly or under contract, will provide technical and other assistance to organizations and practitioners implementing opioid overdose prevention programs.

Minimizing Adverse Impact:

The program is designed to minimize impact on those who will participate in the following ways: participation is voluntary; the registration process is simple; no fees are charged; and record-keeping and reporting requirements are minimal.

Rural Area Participation:

The Department has actively sought to engender increased opportunities for opioid overdose prevention, including in rural parts of the state. That has entailed one-on-one dialog with—and technical assistance provided to—eligible providers in the state's rural counties. That focus will not change with the amended regulation; however there will be increased opportunities for implementation of the regulated programs in rural areas because new classes of organizations will be eligible: public safety agencies, state agencies and pharmacies.

The mechanisms for engaging rural participation include outreach by Department staff, as well as from local health departments and from staff from the Office of Alcoholism and Substance Abuse Services, the Division of Criminal Justice Services, the Harm Reduction Coalition, Albany Medical College and other community partners.

The NYSDOH, since the implementation of the current regulations, has considered input on how they could be improved. The most significant changes in the proposed regulation—including non-patient specific prescriptions; shared access to, and use of, naloxone by trained overdose responders; and expanded eligibility were the product of this input.

***Job Impact Statement***

A Job Impact Statement is not required. The proposed rule will not have a substantial adverse impact on jobs and employment opportunities based upon its nature, purpose and subject matter.

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

### Certificate of Public Advantage

**I.D. No.** HLT-38-13-00007-RP

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

***Proposed Action:*** Addition of Subpart 83-1 to Title 10 NYCRR.

***Statutory authority:*** Public Health Law, section 2999-bb

***Subject:*** Certificate of Public Advantage.

***Purpose:*** For the health care industry to obtain reasonable protections from antitrust liability through an active state oversight program.

***Substance of revised rule:*** The proposed rule would add a new Subpart 83-1 to 10 NYCRR titled Certificate of Public Advantage.

Section 83-1.1 Contains definitions for purposes of this Subpart, including definitions for "Attorney General," "Certificate of Public Advantage,"

"Cooperative Agreement," "Federal or State Antitrust Laws," "Health Care Provider," "Mental Hygiene Agency," "Person," "Planning Process" and "Primary Service Area."

Section 83-1.2 Certificate of Public Advantage. Describes the effect of obtaining a Certificate of Public Advantage ("COPA") and sets forth the basic contents of an application.

Section 83-1.3 Public notice. Provides for public notice of an application, by both the department and each party to the agreement or proposed agreement for which approval is sought.

Section 83-1.4 Fees for applications and monitoring. Sets forth fees and costs to be paid in relation to applications and renewals.

Section 83-1.5 Review process. Sets forth the factors to be considered by the Department in its review of applications for a COPA.

Section 83-1.6 Issuance of a Certificate of Public Advantage. Provides for consultation with the Attorney General, the mental hygiene agencies (as appropriate), and the Public Health and Health Planning Council ("PHHPC") in the issuance of a COPA, sets forth examples of conditions which may be imposed in the issuance of a COPA, and provides for the period for which such COPA may be valid.

Section 83-1.7 Record keeping. Requires the Department to maintain a record of all Cooperative Agreements for which COPAs are in effect and a copy of the certificate, including any conditions imposed in it.

Section 83-1.8 Modification and termination. Provides that any material modification of an approved cooperative agreement is subject to the prior review and approval of the Department in consultation with the Attorney General, mental hygiene agencies (as appropriate), and the PHHPC, and that any party to a Cooperative Agreement covered by a COPA must file notice of such termination with the Department at least thirty days prior to the termination. The notice of termination will be provided by the Department to the Attorney General and the mental hygiene agencies (as appropriate).

Section 83-1.9 Periodic reports. Requires periodic filing of reports of activity pursuant to a COPA, and sets forth the frequency and contents of such reports.

Section 83-1.10 Review after issuance of Certificate of Public Advantage. Provides for Department review of reports, and includes provisions addressing corrective measures the Department may take under certain circumstances.

Section 83-1.11 Application for renewal. Provides for renewal of an approved COPA.

Section 83-1.12 Revocation. Provides for revocation of a COPA by the Department under certain circumstances, and a procedure for doing so.

Section 83-1.13 Hearing rights. Provides for a right of hearing prior to the Department's revocation of a COPA.

Section 83-1.14 Voluntary surrender. Allows for the voluntary surrender of a COPA.

Section 83-1.15 Effect of consultation or recommendations. Clarifies treatment of input received pursuant to consultations with, or recommendations from, the Attorney General, mental hygiene agencies (as appropriate), or the PHHPC.

Section 83-1.16 Certificate of need and other requirements. Provides that nothing in this Subpart shall relieve parties from any responsibility for compliance with laws or regulations governing certificate of need or other approval or notice submission requirements.

A copy of the full text of the regulatory proposal is available on the Department of Health website (www.health.ny.gov).

***Revised rule compared with proposed rule:*** Substantial revisions were made in sections 83-1.1, 83-1.2, 83-1.3, 83-1.4, 83-1.5, 83-1.6, 83-1.8, 83-1.9, 83-1.10, 83-1.11, 83-1.12 and 83-1.14-1.15.

***Text of revised 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:*** 30 days after publication of this notice.

***Revised Regulatory Impact Statement***

Statutory Authority:

The authority for the proposed addition of a new Subpart 83-1 to Title 10 NYCRR is Article 29-F of the Public Health Law ("PHL").

Legislative Objectives:

In March 2011, Governor Cuomo's Medicaid Redesign Team ("MRT") recommended providing support for integration and collaboration among health care providers by conferring immunity from state and federal antitrust liability through the active state supervision of such activities. Subsequently, the Legislature accepted the recommendation of the MRT and enacted PHL Article 29-F (Chapter 59 of the Laws of 2011, Part H, § § 50-51).

In enacting PHL Article 29-F, the Legislature found that coordination of health care services is essential to the improvement of health care quality, efficiency, access and outcomes. In addition, the Legislature found that collaborative arrangements among, or consolidation, mergers or acquisition of, providers may be necessary to preserve access to essential services in some communities. Such collaborative agreements also may improve the quality of the services provided to patients, the efficiency of provider operations, and help contain costs. Furthermore, health system reform proposals at the federal and state levels, including mechanisms such as accountable care organizations, health homes, patient-centered medical homes and payment reforms such as penalties for potentially preventable readmissions all rely on integration and collaboration among providers.

The statute reflects the Legislature's finding that competition as currently mandated by federal and state antitrust laws should be supplanted by a regulatory program to permit and encourage mergers, acquisitions, and cooperative, collaborative and integrative agreements among health care providers and others in order to assure access to essential health care services, to improve health care quality and outcomes, to enhance efficiency, or to minimize the cost of health care. Further, active state supervision should be provided to ensure that the benefits of such agreements outweigh any disadvantages attributable to any reduction in competition that may result from the agreements, and to provide "state action immunity" to the parties engaged in such activities. The proposed regulations provide a mechanism for accomplishing this objective.

Current Requirements:

Providers seeking to merge or to create a common active parent are currently required to receive approval from the Department as part of the Certificate of Need process. However, an operating certificate issued as a result of the Certificate of Need process does not provide protection from antitrust liability at the state or federal levels. Many other collaborative arrangements among providers and other entities, or between non-provider entities, may proceed without Department approval, are subject to little or no state oversight, and have no protection from antitrust scrutiny.

Other statutory provisions already provide for state supervision for the purpose of promoting health care collaborations and immunity from antitrust liability in specific contexts. These include the multipayor patient-centered medical home program (PHL Article 29-AA), accountable care organization program (PHL Article 29-E) and PHL Article 29-A, relating to rural health networks and rural health care access.

Needs and Benefits:

Increased integration and collaboration among health care providers, and among providers, payors and other healthcare-related entities, are essential to implementing many of the health system reform proposals under the Affordable Care Act and the state MRT initiatives. In addition, payment reforms, such as penalties for potentially preventable readmissions and value-based purchasing, will encourage integration and collaboration among providers. These collaborations promise to improve health care quality and outcomes, strengthen care coordination among providers, reduce inappropriate utilization, increase efficiency and contain health care costs. Further, a collaboration between an economically strong provider and an economically weak one may be able to protect the weaker provider from financial failure and preserve access to care in the community.

However, some collaborative arrangements might be construed as anticompetitive under the antitrust laws and might expose the participants to antitrust liability. Federal case law provides a defense against federal antitrust claims ("state action immunity") where the arrangement is: subject to active state supervision to ensure that the public benefits derived from the integrative and collaborative arrangements outweigh any anticompetitive effects; pursuant to a state-created oversight and approval process; and based upon the state's explicit intent to supplant competition with state oversight and to confer state action immunity upon those entities and activities approved under the process. PHL Article 29-F expresses that intent, and the proposed regulations implement the program provided for by the statute, including the active supervision necessary to provide a state action immunity defense to a federal antitrust claim.

Health care providers that are entering into Cooperative Agreements or a planning process with other providers, or other health care-related entities, may gain a defense against federal antitrust claims and protection from private claims under state antitrust laws by obtaining a Certificate of Public Advantage and complying with these regulations.

This process is optional – providers and other entities may continue to enter into Cooperative Agreements or a planning process without seeking such protection. For example, an entity may determine that the risk of antitrust liability resulting from their arrangement is low and that a Certificate of Public Advantage is not necessary. However, these regulations will provide a path to pursue protection from antitrust liability for those providers that choose to seek a Certificate of Public Advantage, and engage in collaborations that would preserve or expand access to care, improve quality and outcomes, enhance efficiency, and/or curb costs, and which otherwise meet the criteria for approval under the program.

COSTS

Costs to Private Regulated Parties:

As a Certificate of Public Advantage is optional, this regulation creates no mandatory burdens or costs to regulated parties. However, applicants will be charged a $5,000 fee for applications, and for renewals, and will be required to pay for any consultants needed by the Department to analyze the application and the balance of benefits and disadvantages presented by the proposed collaborative arrangement. Applicants will also have ongoing costs with regard to periodic reporting and response to issues arising in the course of oversight. Those costs will vary depending on the size and nature of the project, the complexity of the review, the extent of any issues arising subsequent to initial approval, and other factors. In most cases, however, such costs will be more than offset by the savings resulting from not having to go through federal antitrust reviews, which require similar analysis. Such costs could be several multiples of the cost of participating in the program, even with imposition of the application and consultant fees. Entities need not participate if they choose not to, whether for financial or any other reason. Accordingly, the program may often provide an opportunity for cost savings.

Costs to Local Government:

There are no costs to local government, except to the extent that a local government chooses to seek a certificate of public advantage for its covered activity.

Costs to the Department of Health:

The review of Certificate of Public Advantage applications will require the commitment of staff resources. However, the number of applications is expected to be small, and the reviews will be conducted largely by consultants paid for by the applicants.

Costs to Other State Agencies:

The regulations will require the dedication of some staff resources by the Antitrust Bureau of the Attorney General's Office and, as appropriate, the mental hygiene agencies, which will also review these applications. However, the number of applications is expected to be small, and the Attorney General already engages in antitrust-related reviews. Accordingly, the associated costs to other state agencies should be nonexistent or minimal.

Local Government Mandates:

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

Paperwork:

The proposed regulation requires the submission of an application if the parties to a cooperative agreement wish to seek protection from antitrust liability, together with subsequent ongoing reports and provision of additional information as requested by the Department where necessary during the course of its active supervision of the arrangement. Such paperwork will likely be less burdensome than would be associated with obtaining approval from state and federal antitrust authorities, in addition to possible ongoing enforcement risks in the absence of state action immunity.

Duplication:

There are no relevant State regulations which duplicate, overlap or conflict with the proposed amendment.

Alternatives:

The Certificate of Public Advantage (COPA) process has been adopted in several other states. The Department opted for this type of process because it is known to the federal antitrust enforcement agencies and has withstood their scrutiny. The Department considered alternative fee requirements and determined that a $5,000 fee plus the costs of needed consultants would be appropriate for both applications and renewals. The Department also considered making all COPAs valid for the same number of years, but determined that the better course would be to tailor the COPA and its duration to the particular arrangement in question.

Federal Standards:

These regulations do not duplicate or conflict with any federal regulations.

Compliance Schedule:

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

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

Changes made to the last published rule do not necessitate revision to the previously published RFA, RAFA and JIS.

***Assessment of Public Comment***

Comment: The definition of "Cooperative Agreement" under proposed § 83-1.1(c)(1) should be amended to clarify that collaborative efforts to be created are in addition to the FTC-recognized "clinically integrated" entities. Therefore, the definition should include the phrase "including, but not limited to".

Response: Section 83-1.1(c)(1) is revised to include the phrase "including but not limited to".

Comment: The regulations should not apply to transfers of assets through a sale, merger or other change-of-control transaction. This type of transaction is not a Cooperative Agreement between two independent entities and should be subject to traditional antitrust scrutiny.

Response: Mergers and acquisitions are referenced in Public Health Law (PHL) § 2999-aa. The Department of Health (DOH) is authorized to determine which proposed collaborations, integrations, mergers or acquisitions will be covered.

Comment: "Regional health improvement collaborative" should be defined.

Response: Reference to regional health improvement collaborative has been removed in favor of a broader reference to planning entities approved by DOH, providing DOH the flexibility to consider a range of potential planning processes.

Comment: Providers licensed or certified under the Mental Hygiene Law (MHL) should be included.

Response: Section 83-1.1(e) is revised to include entities licensed, certified or funded under MHL Articles 16, 31, 32 or 41.

Comment: The definition of "health care provider" should be extended to an Article 44 managed care organization (MCO).

Response: DOH has determined no changes to the regulation are needed.

Comment: The definition of "person" in § 83-1.1 should explicitly refer to payors such as HMOs, insurers or Medicare.

Response: DOH has determined no changes to the regulation are needed.

Comment: The terms "market", "geography" and "region" appear to be interchangeable; they should be clarified and defined.

Response: The proposed regulations have been revised to use the term Primary Service Area (PSA), defined in § 83-1.1.

Comment: Section 83-1.2(a), stating that a person with a COPA will not be subject to federal antitrust laws, should be revised as State law cannot unilaterally declare that an arrangement is exempt from federal law.

Response: Section 83-1.2(a) is revised to clarify that the regulations further the statutory intent to provide state action immunity for collaborative arrangements that promote improved quality, efficiency of and access to health care services through the COPA process.

Comment: Section 83-1.2, allowing for retroactive enforcement by the Attorney General of arrangements approved under a COPA on the basis of an antitrust analysis, is inconsistent with the statute.

Response: Article 29-F states that it is not intended to limit the authority of the Attorney General. The regulations achieve the statute's intent to provide state action immunity under the state and federal antitrust laws for collaborative arrangements that promote improved quality, efficiency of and access to health care services through the COPA process while preserving the Attorney General's authority as authorized by law.

Comment: Approvals of COPAs granted over the Attorney General's objection should not be afforded immunity from a private right of action under state antitrust law.

Response: The regulations, consistent with Article 29-F, establish a process to provide state action immunity from private claims under state antitrust laws, as well as from federal antitrust claims. In reviewing COPA applications, DOH will consult with the Attorney General and applications will be reviewed on a case by case basis.

Comment: Some comments indicated that DOH should explicitly preclude a Cooperative Agreement from authorizing the setting or negotiating of payment rates or methodologies or sharing or distributing revenue, while others said the regulations should expressly state that obtaining a COPA enables such entity to negotiate pricing with an insurance company.

Response: In consultation with the Office of the Attorney General, the mental hygiene agencies and the Public Health and Health Planning Council (PHHPC), DOH will review COPA applications on a case by case basis. If it is determined that the Cooperative Agreement or planning process is beneficial to New York residents and the setting of price is integral to implementation of a Cooperative Agreement, DOH may issue a COPA and may include conditions related to the negotiation of reimbursement contracts.

Comment: DOH should institute a "sliding scale" fee schedule.

Response: The application fee will be the same for everyone; the consulting fee will vary based on the complexity of the application.

Comment: The "factors to be considered" under § 83-1.5 should be required for a Cooperative Agreement.

Response: Cooperative Agreements or planning processes which are the subject of COPA applications may take many different forms and consist of a broad range of factual circumstances. Factors stated in the proposed regulations will guide DOH's review and applications will be reviewed on a case by case basis.

Comment: The review process should consider: (a) existing agreements between or among the parties to a proposed Cooperative Agreement; (b)

price information; and (c) an assessment that the services intended to be preserved by a COPA is needed and not already provided by other providers in the community.

Response: Factors stated in the proposed regulations will guide DOH's review and application will be conducted on a case by case basis. Upon review of an application, DOH will determine if additional information is necessary.

Comment: To the extent that the proposed regulations would allow COPAs to be issued for purposes of mergers, acquisitions or regional health planning, a showing of clinical quality improvements should be required.

Response: Clinical quality improvements would be captured under § 83-1.5(c).

Comment: Approval of a COPA should be based on a "clear and convincing" standard.

Response: The regulations permit DOH to approve a COPA if the benefits likely to result from the cooperative agreement or planning process outweigh the potential disadvantages, including reduced competition, which is consistent with Article 29-F.

Comment: In weighing potential disadvantages, the regulations require DOH to consider whether issuance of the COPA would render payers unable to negotiate ''reasonable payment and service arrangements''. Section 83-1.5(d)(3) should be revised to include an ''optimal'' standard as used in several other states.

Response: The "reasonable" standard is an appropriate standard in weighing the interests of providers and payors. This is one factor that will guide DOH's review and each application will be reviewed on a case by case basis.

Comment: An executed Cooperative Agreement should not be permissible until a COPA is granted.

Response: A COPA is discretionary. Parties may choose to enter into cooperative arrangements or collaborative planning without seeking the protections that a COPA can provide. Cooperative arrangements and collaborative planning processes that are directed at improving access, improving quality and lowering cost often do not raise antitrust concerns. Moreover, the regulations are consistent with Article 29-F, which states that the planning and negotiations that precede executed agreements may be the subject of COPA applications.

Comment: Review and renewal of COPAs should provide for public input. The review and renewal should confirm that the benefits achieved were pursuant to the least restrictive means. The role of the PHHPC should be clarified.

Response: The regulations provide that information about COPA applications, including renewal applications, will be available on DOH's website. There will be opportunity for public comment on a COPA application, either in writing or in person, at a meeting of a designated PHHPC committee. The recommendation of the committee will be presented to the full PHHPC for review and recommendation. The regulations provide that the review of COPA applications will include consideration of the availability of arrangements that are less restrictive to competition and achieve equivalent benefits.

Comment: The regulation should be revised to require PHHPC approval of a COPA application as a condition of issuance of a COPA, not just the receipt of a recommendation of the PHHPC.

Response: The regulation is consistent with PHL § 2999-aa, which requires the Commissioner to consult with, and receive recommendations from, the PHHPC before approving COPA applications.

Comment: One of the factors that should be considered in evaluating applications is workforce protection, status of which is to be determined in consultation with caregivers and their representatives.

Response: Section 83-1.6 is revised to include the health care workforce as a factor to be considered in the review of a COPA application.

Comment: While allowing DOH broad discretion to impose any appropriate condition on a case-by-case basis makes sense, some conditions should be required in all cases and included in the regulations, such as: contracting parameters with third party payors; inclusion of a most favored nations clause; prior approval by DOH before the termination or nonrenewal of a contract with a third-party payor; restrictions on operating margins, and price, cost and physician employment caps.

Response: Cooperative Agreements or planning processes which are the subject of COPA applications may take many different forms and consist of a broad range of factual circumstances. Factors stated in the proposed regulations will guide DOH's review and each application will be reviewed on a case by case basis.

Comment: Revise the requirements applicable to annual reports to require reports each year the COPA is in effect, to add specific reporting criteria related to the exercise of pricing power, and to allow for public comment on each annual report.

Response: Section 83-1.9 was revised to require an annual report for each year that a COPA is in effect and to add language authorizing the Department to require additional information as warranted; if appropriate, this could include information related to the exercise of pricing power.

Comment: Reports under proposed § 83-1.9 should be filed quarterly, or at least bi-annually, for the duration of the COPA and the collaboration should be required to reflect upon the application submitted and report if the desired results were achieved.

Response: The proposed regulations require annual reports as a minimum, which shall include a description of the activities conducted pursuant to the Cooperative Agreement or planning process, and additional reports at such other times as DOH, in consultation with the Office of the Attorney General, may determine.

Comment: To assure meaningful input from the community on an ongoing basis, the regulations should be revised to require the establishment of a community advisory board for each COPA. The purpose of the advisory board would be to establish community health goals and planning needs, coordinate services, review and comment on annual reports, and receive and act on consumer complaints.

Response: The regulations provide that information about COPA applications, including renewal applications, will be available on DOH's website. There will be opportunity for public comment on a COPA application, either in writing or in person at a meeting of a designated PHHPC committee.

Comment: While § 83-1.10 allows DOH to request additional information from the parties to a Cooperative Agreement any time it appears that they have failed to comply with the COPA certificate and related conditions, it grants no express enforcement authority other than revoking or amending the certificate. The regulations should be revised to afford DOH with the same degree of oversight and enforcement authority that it has with any other DOH regulated/licensed/certified entity, including the ability to conduct surveys, issue statement of deficiencies, require the submission of acceptable plans of correction, and issue fines. Such oversight will provide a necessary mechanism to assure ongoing compliance and is required to satisfy the ''active supervision'' necessary to obtain state action immunity.

Response: Article 29-F authorizes DOH to engage in appropriate supervision necessary to promote state action immunity under the state and federal antitrust laws, and revocation or amendment of a COPA is the appropriate remedy for any lack of compliance.

Comment: DOH should have the authority to dismantle the Cooperative Agreement and terminate any COPA if the review process determines that the negative effects to competition outweigh the benefits and efficiencies, regardless of the cost incurred for terminating the arrangement.

Response: Article 29-F confers upon DOH the authority to grant, modify, renew and revoke COPAs but not to require the termination of a Cooperative Agreement. When determining whether to revoke a COPA, it is appropriate to consider additional facts such as the unavoidable costs of terminating a Cooperative Agreement.

# Department of Motor Vehicles

## NOTICE OF ADOPTION

### Waiver of Skills Test for Certain Out of State Licensees Applying for a NYS License

**I.D. No.** MTV-25-14-00011-A
**Filing No.** 710
**Filing Date:** 2014-08-12
**Effective Date:** 2014-08-27

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

***Action taken:*** Amendment of Part 8 of Title 15 NYCRR.

***Statutory authority:*** Vehicle and Traffic Law, sections 215(a), 502(4)(b) and 508

***Subject:*** Waiver of skills test for certain out of state licensees applying for a NYS license.

***Purpose:*** Skills test waived for out of state applicants for a NYS license if out of state license is not expired more than two years.

***Text or summary was published*** in the June 25, 2014 issue of the Register, I.D. No. MTV-25-14-00011-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** Michelle Seabury, Department of Motor Vehicles, 6 Empire State Plaza, Room 522A, Albany, NY 12228, (518) 474-0871, email: mseabury@dmv.ny.gov

***Assessment of Public Comment***
The agency received no public comment.

# Public Service Commission

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

**Tariff Changes to Revise the Calculation of the Monthly Cost of Gas for the Fixed Gas Cost and the Fixed Cost Credit Components**

**I.D. No.** PSC-34-14-00004-P

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

***Proposed Action:*** The Commission is considering a proposal filed by The Brooklyn Union Gas Company d/b/a National Grid NY to make various changes to the rates, charges, rules and regulations contained in its Schedule for Gas Services P.S.C. No. 12 — Gas.

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

***Subject:*** Tariff changes to revise the calculation of the monthly cost of gas for the fixed gas cost and the fixed cost credit components.

***Purpose:*** To revise the calculation of the fixed gas cost and the fixed cost credit components of SC Nos. 4A; 4A-CNG and 4B.

***Substance of proposed rule:*** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid NY (the Company) to revise the calculation of both the fixed gas cost component and the fixed cost credit component of the monthly cost of gas for Service Classification (SC) Nos. 4A - High Load Factor Service; SC No. 4A-CNG - Compressed Natural Gas Equipment Service and SC No. 4B - Year-Round Air Conditioning Service. These changes will impact the calculation of the monthly cost of gas for the Company's firm sales customers provided service under SC No. 1 - Residential; SC No. 2 - General Service (Non-Residential); SC No. 3 - Heating and/or Water Heating Service (Multi-Family Buildings) and SC No. 21 - Base Load Distributed Generation Sales Service. Also impacted is the calculation of the fixed cost credits allocated to sellers serving transportation customers provided service under SC No. 17 - Core Transportation and Swing Service. The proposed adjustments to the fixed costs and fixed cost credits are to be phased-in over a three year period in order to minimize impact to customers. The amendments have an effective date of September 1, 2014.

***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) 474-4535, email: secretary@dps.ny.gov

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

***Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-G-0439SP3)

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

**Authorization of Long-Term Loan**

**I.D. No.** PSC-34-14-00006-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 whether to approve disapprove, or modify a petition filed by Forever Wild Water Company to borrow approximately $420,000 from the Community Bank to complete repairs to its water tank.

***Statutory authority:*** Public Service Law, section 89-f

***Subject:*** Authorization of long-term loan.

***Purpose:*** To allow or disallow Forever Wild Water Company to enter into long-term loan agreement.

***Substance of proposed rule:*** The Commission is considering whether to approve, reject or modify, in whole or in part, the petition of Forever Wild Water Company, Inc. for approval to borrow approximately $420,000 from the Community Bank to replace an existing water storage tank that is old and in disrepair. The Commission may consider other related issues.

***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, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, 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.

(14-W-0307SP1)

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

**Tariff Changes to Revise the Calculation of the Monthly Cost of Gas for the Fixed Gas Cost and the Fixed Cost Credit Components**

**I.D. No.** PSC-34-14-00007-P

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

***Proposed Action:*** The Commission is considering a proposal filed by KeySpan Gas East dba Brooklyn Union of L.I. to make various changes to the rates, charges, rules and regulations contained in its Schedule for Gas Services P.S.C. No. 1 — Gas.

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

***Subject:*** Tariff changes to revise the calculation of the monthly cost of gas for the fixed gas cost and the fixed cost credit components.

***Purpose:*** To revise the calculation of the fixed gas cost and the fixed cost credit components of SC Nos. 4A; 4A-CNG and 4B.

***Substance of proposed rule:*** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by KeySpan Gas East Corp. d/b/a Brooklyn Union of L.I. (the Company) to revise the calculation of both the fixed gas cost component and the fixed cost credit component of the monthly cost of gas for Service Classification (SC) No. 4A - High Load Factor Service; SC No. 4A-CNG - Compressed Natural Gas Equipment Service and SC No. 4B - Year-Round Air Conditioning Service. These changes will impact the calculation of the monthly cost of gas for the Company's firm sales customers provided service under SC No. 1 - Residential; SC No. 2 - General Service (Non-Residential); SC No. 3 - Heating and/or Water Heating Service (Multi-Family Buildings) and SC No. 21 - Base Load Distributed Generation Sales Service. Also impacted is the calculation of the fixed cost credits allocated to sellers serving transportation customers provided service under SC No. 17 - Core Transportation and Swing Service. The proposed adjustments to the fixed costs and fixed cost credits are to be phased-in over a three year period in order to minimize impact to customers. The amendments have an effective date of September 1, 2014.

***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) 474-4535, 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.

(14-G-0163SP2)

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

**Petition for Submetering of Electricity**

**I.D. No.** PSC-34-14-00008-P

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

***Proposed Action:*** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 18 Gramercy Park Condominium to submeter electricity at 18 Gramercy Park, New York, New York.

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

***Subject:*** Petition for submetering of electricity.

***Purpose:*** To consider the request of 18 Gramercy Park Condominium to submeter electricity at 18 Gramercy Park, New York, New York.

***Substance of proposed rule:*** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 18 Gramercy Park Condominium to submeter electricity at 18 Gramercy Park, New York, New York, located in the territory of Consolidated Edison Company, Inc.

***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.

(14-E-0333SP1)

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

**Whether to Approve the Quadlogic S10N Residential Submeter**

**I.D. No.** PSC-34-14-00009-P

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

***Proposed Action:*** The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Quadlogic Controls Corporation for approval of the S10N Smart Meter for use in indoor residential electric submeter applications.

***Statutory authority:*** Public Service Law, sections 67(1), (4) and 30-53

***Subject:*** Whether to approve the Quadlogic S10N residential submeter.

***Purpose:*** Approval of the Quadlogic S10N Smart Meter for use in residential electric submetering is required by 16 NYCRR Parts 93 and 96.

***Substance of proposed rule:*** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Quadlogic Controls Corporation of the S10N Smart Meter for use in residential submetering applications. The Commission may also consider other, 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.

(14-E-0326SP1)

# Department of State

### NOTICE OF ADOPTION

**Supervisory Appraiser/Trainee Appraiser Course Outline Requirements**

**I.D. No.** DOS-25-14-00016-A

**Filing No.** 711

**Filing Date:** 2014-08-12

**Effective Date:** 2014-09-01

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

***Action taken:*** Amendment of section 1103.3(e)(4) and (5); and addition of section 1103.12 to Title 19 NYCRR.

***Statutory authority:*** Executive Law, section 160-d, art. 6-E

***Subject:*** Supervisory Appraiser/Trainee Appraiser Course Outline Requirements.

***Purpose:*** To establish the required course curriculum for the Supervisory Appraiser/Trainee Appraiser Course.

***Text or summary was published*** in the June 25, 2014 issue of the Register, I.D. No. DOS-25-14-00016-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** David A. Mossberg, Esq., NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.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 2017, 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.

# State University of New York

### NOTICE OF ADOPTION

**Amendments to Traffic and Parking Regulations at State University College at Plattsburgh**

**I.D. No.** SUN-21-14-00007-A

**Filing No.** 699

**Filing Date:** 2014-08-06

**Effective Date:** 2014-08-27

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

***Action taken:*** Amendment of Part 565 of Title 8 NYCRR.

***Statutory authority:*** Education Law, section 360(1)

***Subject:*** Amendments to Traffic and Parking Regulations at State University College at Plattsburgh.

***Purpose:*** To amend existing regulations to update traffic and parking regulations at State University College at Plattsburgh.

***Text or summary was published*** in the May 28, 2014 issue of the Register, I.D. No. SUN-21-14-00007-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** Lisa S. Campo, State University of New York, Office of General Counsel, University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

***Assessment of Public Comment***

The agency received no public comment.

# Department of Taxation and Finance

## NOTICE OF ADOPTION

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

**I.D. No.** TAF-22-14-00006-A

**Filing No.** 707

**Filing Date:** 2014-08-11

**Effective Date:** 2014-08-11

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

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

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

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

***Purpose:*** To set the sales tax component and the composite rate per gallon for the period July 1, 2014 through September 30, 2014.

***Text or summary was published*** in the June 4, 2014 issue of the Register, I.D. No. TAF-22-14-00006-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 D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

***Assessment of Public Comment***

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

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

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

**I.D. No.** TAF-34-14-00003-P

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

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

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

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

***Purpose:*** To set the sales tax component and the composite rate per gallon for the period October 1, 2014 through December 31, 2014.

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

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

| | Motor Fuel | | | Diesel Motor Fuel | |
|---|---|---|---|---|---|
| | Sales Tax Component | Composite Rate | Aggregate Rate | Sales Tax Component | Composite Rate | Aggregate Rate |
| (lxxv) July - September 2014 | 16.0 | 24.0 | 42.4 | 16.0 | 24.0 | 40.65 |
| *(lxxvi) October - December 2014* | *16.0* | *24.0* | *42.4* | *16.0* | *24.0* | *40.65* |

***Text of proposed rule and any required statements and analyses may be obtained from:*** Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

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

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

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

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