

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Species of Ash Trees, Parts Thereof and Products and Debris Therefrom Which Are at Risk for Infestation by the Emerald Ash Borer

I.D. No. AAM-23-14-00001-EP

Filing No. 430

Filing Date: 2014-05-22

Effective Date: 2014-05-22

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

Proposed Action: Amendment of section 141.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: The rule amends section 141.2 of 1 NYCRR to extend the Emerald Ash Borer (EAB) quarantine to all of Madison and Onondaga Counties.

EAB, *Agrilus planipennis*, an insect species non-indigenous to the United States, is a destructive wood-boring insect native to eastern Russia, northern China, Japan and the Korean peninsula. EAB can cause serious damage to healthy ash trees by boring through their bark, consuming cambium tissue, which contains growth cells, and phloem tissue, which is

responsible for carrying nutrients throughout the tree. This boring activity results in loss of bark, or girdling, and ultimately results in the death of the tree within two years. The average adult EAB is 3/4 of an inch long and 1/6 of an inch wide and is a dark metallic green in color. The larvae are approximately 1 to 1 1/4 inches long and are creamy white in color. Adult insects emerge in May and June and begin laying eggs in crevasses in the bark about two weeks after emergence. One female can lay 60 to 90 eggs. After hatching, the larvae burrow into the bark and begin feeding on the cambium and phloem, usually from late July or early August through October, before overwintering in the outer bark. The larvae emerge as adult insects the following spring, and the life cycle begins anew. Evidence of the presence of the EAB includes loss of tree bark, S-shaped larval galleries, or tunnels, just beneath the bark, small, D-shaped exit holes through the bark and dying and thinning branches near the top of the tree.

Ash trees, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Materials at risk of attack and infestation by the EAB include the following species of North American ash trees: White Ash (*Fraxinus Americana*); Green Ash (*Fraxinus pennsylvanica*); Black Ash (*Fraxinus nigra*); and Blue Ash (*Fraxinus quadrangulata*). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in parks and yards throughout the State.

EAB was first discovered in Michigan in June 2002, and has since spread to at least 15 other states as well as to two provinces in Canada. The initial detection of this pest in New York occurred on June 16, 2009 in the Town of Randolph, which is located in southwestern Cattaraugus County and is adjacent to Chautauqua County. A quarantine of both counties was established pursuant to federal protocols for control of EAB.

Further detections were confirmed in six other counties (Monroe, Genesee, Livingston, Steuben, Greene and Ulster) during July and August, 2010. Due to the patchwork nature of these detections, limited detection capabilities and stakeholder input, the EAB quarantine was extended to the following 14 counties in western New York: Monroe, Genesee, Livingston, Steuben, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung. A new quarantine region was established in eastern New York comprised of Greene and Ulster Counties.

In 2011, there were multiple new detections within the Western New York quarantine area. New detections of EAB in Albany and Orange Counties demonstrate further spread of EAB within the Eastern New York quarantine area and prompted the extension of the quarantine to include those counties.

In 2012, there were new detections within the Western New York quarantine area as well as the Eastern New York area. All but two were within quarantine counties. Dutchess and Tioga Counties were new detections outside the quarantine area and as such, were quarantined per federal protocols.

In 2013, the two quarantine zones were combined by adding the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins as well as portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga south of the New York State Thruway. This expansion created one quarantine zone.

Subsequent to this expansion, there were multiple finds of EAB in Onondaga County during the 2013 trapping season. On November 1, 2013, EAB was identified just to the north of the quarantine boundary in Onondaga County. These finds have prompted the decision to promulgate this rule which will extend the quarantine north of the New York State Thruway to encompass all of Onondaga County. In addition, given the rapid pace of the spread of EAB and to simplify compliance, the rule will extend the quarantine north of the New York State Thruway to encompass all of Madison County.

The regulations are necessary to protect the general welfare, since the effective control of the EAB in those portions of counties where this insect has most recently been found is important to protect New York's nursery,

forest products industry, urban and suburban street trees and forest resources. The quarantine will help ensure that as control measures are undertaken, EAB does not spread beyond those areas via the movement of infested trees and materials.

The regulations are also necessary to balance pest risk against economic impacts as this program transitions to a management program. The immediate adoption of this rule is necessary to meet Federal protocols for new detections as well as mitigate negative economic impacts that have resulted from the current configuration of the quarantine.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of these amendments is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Species of ash trees, parts thereof and products and debris therefrom which are at risk for infestation by the emerald ash borer.

Purpose: To extend the emerald ash borer quarantine to prevent the further spread of the beetle to other areas.

Text of emergency/proposed rule: Section 141.2 of 1 NYCRR is amended to read as follows:

Section 141.2. Quarantined area.

(a) Regulated articles as described in section 141.3 of this Part shall not be shipped, transported or otherwise moved from any point within Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Erie, Genesee, Greene, Livingston, Madison, Monroe, Niagara, Onondaga, Ontario, Orleans, Orange, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Wayne, Wyoming and Yates Counties to any point outside of said counties, except in accordance with this Part.

(b) Regulated articles as described in section 141.3 of this Part shall not be shipped, transported or otherwise moved from any point within those portions of Fulton, Herkimer, [Madison,] Montgomery[,] and Oneida [and Onondaga] Counties inclusive of and south of the New York State Thruway to any point outside of said counties, except in accordance with this Part. The boundary of the quarantine in these counties is as follows: [a line from the shore of Lake Ontario following the boundary of Cayuga County south to the New York State Thruway; continuing east along and inclusive of the New York State Thruway to its intersection with State Route 28 in Herkimer County; continuing north along State Route 28 to its intersection with State Route 29; continuing east along State Route 29 onto State Route 29A until the crossing of the East Canada Creek; continuing south along the East Canada Creek to its intersection with State Highway 29; continuing east along State Highway 29 until its intersection with State Highway 67; continuing east along State Highway 67 until its intersection with the Saratoga County line; continuing south along the boundary of Saratoga and Albany Counties to the Rensselaer County line.] *a line from the shore of Lake Ontario following the boundary of Cayuga County south to the Onondaga/Oswego County Line. Continuing east to include all of Onondaga and Madison Counties and following the Madison/Oneida county line south to the NYS Thruway (Interstate 90). Continuing East along, and including, I-90 to its intersection with State Route 28 in Herkimer County. Then North along State Route 28 to its intersection with State Route 29. East along State Route 29 continuing straight onto State Route 29A until the crossing of the East Canada Creek. Then South along the East Canada Creek to its intersection with State Highway 29. East on State Highway 29 until its intersection with State Highway 67. Then continuing East on State Highway 67 until its intersection with the Saratoga County line. From there, south along the boundary of Saratoga and Albany Counties to the Rensselaer County line.*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 19, 2014.

Text of rule and any required statements and analyses may be obtained from: Christopher A. Logue, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets

Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law.

2. Legislative objectives:

The regulations are consistent with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the Emerald Ash Borer (EAB).

3. Needs and benefits:

The rule amends section 141.2 of 1 NYCRR to extend the EAB quarantine north of the New York State Thruway to encompass all of the counties of Madison and Onondaga.

The Emerald Ash Borer, *Agilus planipennis*, an insect species non-indigenous to the United States, is a destructive wood-boring insect native to eastern Russia, northern China, Japan and the Korean peninsula. EAB can cause serious damage to healthy trees by boring through their bark, consuming cambium tissue, which contains growth cells, and phloem tissue, which is responsible for carrying nutrients throughout the tree. This boring activity results in loss of bark, or girdling, and ultimately results in the death of the tree within two years. The average adult EAB is 3/4 of an inch long and 1/6 of an inch wide and is a dark metallic green in color. The larvae are approximately 1 to 1 1/4 inches long and are creamy white in color. Adult insects emerge in May and June and begin laying eggs in crevasses in the bark about two weeks after emergence. One female can lay 60 to 90 eggs. After hatching, the larvae burrow into the bark and begin feeding on the cambium and phloem, usually from late July or early August through October, before overwintering in the outer bark. The larvae emerge as adult insects the following spring, and the life cycle begins anew. Evidence of the presence of the EAB includes loss of tree bark, S-shaped larval galleries, or tunnels, just beneath the bark, small, D-shaped exit holes through the bark and dying and thinning branches near the top of the tree.

Ash trees, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Materials at risk of attack and infestation by the EAB include the following species of North American ash trees: White Ash (*Fraxinus americana*); Green Ash (*Fraxinus pennsylvanica*); Black Ash (*Fraxinus nigra*); and Blue Ash (*Fraxinus quadrangulata*). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in parks and yards throughout the State.

EAB was first discovered in Michigan in June 2002, and has since spread to at least 15 other states as well as to two provinces in Canada. The initial detection of this pest in New York occurred on June 16, 2009 in the Town of Randolph, which is located in southwestern Cattaraugus County and is adjacent to Chautauqua County. A quarantine of both counties was established pursuant to federal protocols for control of EAB.

Further detections were confirmed in six other counties (Monroe, Genesee, Livingston, Steuben, Greene and Ulster) during July and August, 2010. Due to the patchwork nature of these detections, limited detection capabilities and stakeholder input, the EAB quarantine was extended to the following 14 counties in western New York: Monroe, Genesee, Livingston, Steuben, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung. A new quarantine region was established in eastern New York comprised of Greene and Ulster Counties.

In 2011, there were multiple new detections within the Western New York quarantine area. New detections of EAB in Albany and Orange Counties demonstrate further spread of EAB within the Eastern New York quarantine area and prompted the extension of the quarantine to include those counties.

In 2013, the two quarantine zones were combined by adding the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schoharie, Schoharie, Seneca, Sullivan, Tioga and Tompkins as well as portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga. This expansion created one quarantine zone.

Subsequent to this expansion, there were multiple finds of EAB in Onondaga County during the 2013 trapping season. On November 1, 2013, EAB was identified just to the north of the quarantine boundary in Onondaga County. These finds have prompted the decision to promulgate this rule which will extend the quarantine north of the New York State Thruway to encompass all of Onondaga County. In addition, given the rapid pace of the spread of EAB and to simplify compliance, the rule will extend the quarantine north of the New York State Thruway to encompass all of Madison County.

The regulations are necessary to balance pest risk against economic impacts as this program transitions to a management program. The immediate adoption of this rule is necessary to meet Federal protocols for new detections as well as mitigate negative economic impacts that have resulted from the current configuration of the quarantine.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are 27 licensed nursery growers and 57 licensed plant dealers in the new quarantine areas. However, it is anticipated that only a fraction of these establishments carry regulated articles. There is no approved protocol for ash nursery stock. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

According to the US Census Bureau's most recent County Business Patterns Report, there are 5 logging companies, sawmills and forest-products manufacturers in these counties as well as 2 businesses which provide support services to the forestry industry, employing approximately 50 workers.

Regulated parties exporting regulated articles, exclusive of nursery stock, from the new quarantine area, other than pursuant to compliance agreement, would require an inspection of the materials, taking and analyzing soil samples, reviewing shipment records and issuing a federal or state certificate of inspection. These services are available at a rate of \$25 per hour. Most inspections will take one hour or less. However, most shipments would be made pursuant to compliance agreements.

Tree removal services would have the option of leaving host materials within the quarantine area or transporting them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: Some local governments may face expenses in tree maintenance since ash trees have become popular trees to use to line streets. However, the rule does not require local governments to remove the trees from the quarantine area. Accordingly, local governments within the quarantine area will not incur any additional expenses due to the quarantine.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon observations of the industry.

5. Local government mandate:

None.

6. Paperwork:

Regulated articles inspected and certified to be free of EAB moving from the quarantine area established by the rule would have to be accompanied by a state or federal certificate of inspection and a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

The alternative of no action was considered. However, this option is not feasible, given the threat EAB poses to the State's forests and forest-based industries. Additionally, the option of establishing a quarantine throughout the entire state was also considered. However, this option could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of EAB that could result from the unrestricted movement of White Ash, Green Ash, Black Ash and Blue Ash from the quarantine areas. In light of these factors, there does not appear to be any viable alternative to the quarantine set forth in this proposal.

9. Federal standards:

The regulations do not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

It is anticipated that regulated parties would be able to comply with the regulations immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

The small businesses affected by the regulations extending the Emerald Ash Borer (EAB) quarantine north of the New York State Thruway to encompass all of the counties of Madison and Onondaga are the nursery dealers, nursery growers, landscaping companies, loggers, sawmills and other forest products manufacturers located within those counties. There are 27 licensed nursery growers and 57 licensed plant dealers in the new quarantine areas. According to the US Census Bureau's most recent County Business Patterns Report, there are approximately 5 logging companies, sawmills and forest-products manufacturers in the new quarantine area as well as 2 business which provide support services to the forestry industry, employing approximately 50 workers.

It is anticipated that only a fraction of these establishments carry

regulated articles. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

2. Compliance requirements:

There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants. All regulated parties in the quarantine area established by the regulations would be required to obtain certificates and limited permits in order to ship other regulated articles (e.g. firewood and forest products) from that area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

3. Professional services:

In order to comply with the regulations, all regulated parties shipping regulated articles from the quarantine area would require professional inspection services, which would be provided by the Department, the Department of Environmental Conservation (DEC) or the United States Department of Agriculture (USDA).

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the rule: None.

(b) Annual cost for continuing compliance with the rule: Regulated parties exporting regulated articles, exclusive of nursery stock, from the new quarantine area, other than pursuant to compliance agreement, would require an inspection of the materials, taking and analyzing soil samples, reviewing shipment records and issuing a federal or state certificate of inspection. These services are available at a rate of \$25 per hour. Most inspections will take one hour or less. However, most shipments would be made pursuant to compliance agreements.

Tree removal services would have the option to leave host materials within the quarantine area or transport them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

5. Economic and technological feasibility:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping regulated articles (exclusive of nursery stock) from the quarantine area, other than pursuant to a compliance agreement, would require an inspection and the issuance of a certificate of inspection. Most shipments, however, would be made pursuant to compliance agreements. Accordingly, the requirements and procedures are economically and technologically feasible.

6. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses. By expanding the quarantine to areas where EAB has been detected, the rule minimizes economic impacts while maintaining restrictions that assist in minimizing the spread of EAB.

As set forth in the regulatory impact statement, the regulations provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These compliance agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the regulations minimize adverse economic impact as much as is currently possible.

7. Small business and local government participation:

The Department is continuing to keep stakeholder groups informed concerning the spread of EAB and the need to expand the quarantine. A stakeholder meeting is being planned for this spring.

State and federal entities are continuing aggressive outreach efforts in promoting the message "don't move firewood." Movement of firewood continues to present a serious threat to spread of EAB and other invasive insects.

Outreach efforts will continue.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The businesses affected by the regulations extending the Emerald Ash Borer (EAB) quarantine to northern Madison and Onondaga Counties are the nursery dealers, nursery growers, landscaping companies, loggers, sawmills and other forest products manufacturers located within those counties. There are 27 licensed nursery growers and 57 licensed plant

dealers in the new quarantine areas. According to the US Census Bureau's most recent County Business Patterns Report, there are approximately 5 logging companies, sawmills and forest-products manufacturers in the new quarantine area as well as 2 business which provide support services to the forestry industry, employing approximately 50 workers.

These businesses are in rural areas as defined by section 481(7) of the Executive Law.

It is anticipated that only a fraction of these establishments carry regulated articles. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants. All regulated parties in the quarantine area established by the regulations would be required to obtain certificates and limited permits in order to ship other regulated articles (e.g. firewood and forest products) from that area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

In order to comply with the regulations, all regulated parties shipping regulated articles from the quarantine area would require professional inspection services, which would be provided by the Department, the Department of Environmental Conservation (DEC) or the United States Department of Agriculture (USDA).

3. Costs:

Regulated parties exporting regulated articles, exclusive of nursery stock, from the new quarantine area, other than pursuant to compliance agreement, would require an inspection of the materials, taking and analyzing soil samples, reviewing shipment records and issuing a federal or state certificate of inspection. These services are available at a rate of \$25 per hour. Most inspections will take one hour or less. However, most shipments would be made pursuant to compliance agreements.

Tree removal services would have the option to leave host materials within the quarantine area or transport them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the Department has designed the rule to minimize adverse economic impact on businesses in rural areas. By expanding the quarantine to areas where EAB has been detected, the rule minimizes economic impacts while maintaining restrictions that assist in minimizing the spread of EAB.

As set forth in the regulatory impact statement, the regulations provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These compliance agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact.

5. Rural area participation:

The Department is continuing to keep stakeholder groups informed concerning the spread of EAB and the need to expand the quarantine. A stakeholder meeting is being planned for this spring.

State and federal entities are continuing aggressive outreach efforts in promoting the message "don't move firewood." Movement of firewood continues to present a serious threat to spread of EAB and other invasive insects.

Outreach efforts will continue.

Job Impact Statement

The amendment to section 141.2, extending the Emerald Ash Borer (EAB) north of the New York State Thruway to encompass all of the counties of Madison and Onondaga, will not have a substantial adverse impact on jobs or employment opportunities and in fact, will likely aide in protecting jobs and employment opportunities for now and in the future. Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than \$2 billion.

By extending the EAB quarantine, the regulation is designed to prevent the further spread of this pest to other parts of the State. There are an estimated 750-million ash trees in New York State (excluding the Adirondack and Catskill Forest Preserves), with ash species making up approximately seven percent of all trees in our forests. A spread of the infestation would have very adverse economic consequences to the nursery, forestry and wood-working (e.g. lumber yard, flooring and furniture and cabinet making) industries of the State, due to the destruction of the regulated articles upon which these industries depend. Additionally, a spread of the infestation could result in the imposition of more restrictive quarantines by the federal government, other states and foreign countries, which would have a detrimental impact upon the financial well-being of these industries.

By helping to prevent the spread of EAB, the rule helps prevent such

adverse economic consequences, which protects the jobs and employment opportunities associated with the State's nursery, forestry and wood-working industries.

Department of Financial Services

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-23-14-00004-E

Filing No. 445

Filing Date: 2014-05-27

Effective Date: 2014-05-28

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

Action taken: Addition of Part 418 and Supervisory Procedures MB 109 and 110 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

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

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

Purpose: The rule implements provisions of the Subprime Lending Reform Law (Ch. 472, Laws of 2008) amending Article 12-D of the Banking Law to require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). Part 418 sets forth application, exemption and approval procedures for registration as a mortgage loan servicer (MLS) and financial responsibility requirements for applicants, registrants and exempted persons. Supervisory Procedure MB 109 sets forth the details of the application procedure. Supervisory Procedure MB 110 sets forth the procedure for approval of a change of control of a registered MLS.

Substance of emergency rule: SUMMARY OF NEW PART 418

Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418.13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.14 sets forth the transitional rules.]

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

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

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

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

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

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of

an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

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

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

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

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

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

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

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

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

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

SUMMARY OF NEW SUPERVISORY PROCEDURE MB 109

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

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

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

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

SUMMARY OF NEW SUPERVISORY PROCEDURE MB 110

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

Section 110.2 contains a general description of the process for applying

for approval of a change of control of a mortgage loan servicer (“servicer”) and contains information about where the necessary forms and instructions may be found.

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 24, 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.

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

Subsection (1) of Section 590 of the Banking Law was amended by the Subprime Law to add the definitions of “mortgage loan servicer” and “servicing mortgage loans”. (Section 590(1)(h) and Section 590(1)(i).)

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

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

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

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

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

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

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

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

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

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

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.2. Legislative objectives.

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

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

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

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

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

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

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

3. Needs and benefits.

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

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

Further, unlike in the case of a mortgage broker or a mortgage lender,

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

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

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

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

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

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

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

4. Costs.

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

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

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

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

5. Local government mandates.

None.

6. Paperwork.

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

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

7. Duplication.

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

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are

subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

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

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

9. Federal standards.

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

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

10. Compliance schedule.

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

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

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

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

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

MLS registrations, as well as for the imposition of fines and penalties on MLSs.

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

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

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

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

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

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

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

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations.

Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

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

Job Impact Statement

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

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

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

NOTICE OF ADOPTION

Holding Companies

I.D. No. DFS-13-14-00002-A

Filing No. 443

Filing Date: 2014-05-23

Effective Date: 2014-06-11

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

Action taken: Amendment of Subpart 80-1 (Regulation 52) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1505 and 1506

Subject: Holding Companies.

Purpose: To conform to amendments made to Insurance Law section 1505(d) by Chapter 238 of the Laws of 2013.

Text or summary was published in the April 2, 2014 issue of the Register, I.D. No. DFS-13-14-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

Revised Job Impact Statement

Amendment of the regulation will not adversely impact job or employment opportunities in New York, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any insurer subject to the rule. This rulemaking is amended to conform to recent amendments made to Insurance Law sections 1505(d) and 1506 by Chapter 238 of the Laws of 2013. The Department of Financial Services believes that the amended rule will not result in any adverse job or employment impact.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. DFS-23-14-00002-P

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

Proposed Action: This is a consensus rule making to amend Part 83 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-(c)(12) and 4408-a; L. 2002, ch. 599; and L. of 2008, ch. 311

Subject: Financial Statement Filings and Accounting Practices and Procedures.

Purpose: To update citations in Part 83 to the Accounting practices and Procedures Manual as of March 2014 (instead of 2013).

Text of proposed rule:

Subdivision (c) of section 83.2 is amended to read as follows:

(c) To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2013] 2014* (accounting manual) includes a body of accounting guidelines referred to as statements of statutory accounting principles (SSAPs). The accounting manual shall be used in the preparation of quarterly statements and the annual statement for [2013] 2014, which will be filed in [2014] 2015.

Subdivisions (b) and (i) of section 83.4 are amended to read as follows:

(b) The guidance prescribed in paragraph [8] 9 of SSAP No. [10R] 101, "Income Taxes," is not adopted. A refund due from the Treasury should be collectible within a brief period after the statement date, in order to be considered an admitted asset. A balance due as a result of participation in a consolidated tax return should be paid over promptly by the parent. An open account or promissory note from the parent would not be an admissible asset, and may violate the provisions of section 1407(a)(4) of the Insurance Law. For financial statements required to be filed for periods ending [on or] after [December 31, 2009] January 1, 2012, the calculation of adjusted gross deferred tax assets as admitted assets shall be made in accordance with SSAP No. [10R] 101.

(i) Paragraph 5 of SSAP No. 35 "Guaranty Fund and Other Assessments" is adopted with the following addition:

The following shall be admitted assets of article 43 corporations, Public Health Law article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans with or without notification of refund or payment:

[(i)] (1) estimated market stabilization reinsurance or pooling recoverables under section 3233 of the

Insurance Law;

[(ii)] (2) estimated stop-loss recoverables under sections 4321-a, 4322-a and 4327 of the Insurance Law; and

[(iii)] (3) estimated reinsurance recoverables under the Department of Health New York State Medicaid Managed Care Reinsurance Program.

* ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2013] 2014. © Copyright 1999 – [2013] 2014 by National Association of Insurance Commissioners, in Kansas City, Missouri.

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

Data, views or arguments may be submitted to: Same as above.
Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

No person is likely to object to amendment of the rule that adopts the most recent edition of the Accounting Practices and Procedures Manual As of March 2014 (“2014 Accounting Manual”), published by the National Association of Insurance Commissioners (“NAIC”), and replaces the rule’s current reference to the Accounting Practices and Procedures Manual As of March 2013. The amendment also updates references to SSAP 10R to read SSAP 101, to reflect the same changes that were made by the NAIC as of January 1, 2012. The rule also makes technical corrections to Section 83.4(i).

All states require insurers to comply with the 2014 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC-accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers’ corporate and financial affairs, and that they have the necessary resources to carry out that authority.

The Department determines this rule to be a consensus rule, as defined in State Administrative Procedure Act § 102(11) (SAPA), and is proposed pursuant to SAPA § 202(1)(b)(i). Accordingly, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments or a Rural Area Flexibility Analysis.

Job Impact Statement

Job Impact Exemption for the Eleventh Amendment to Insurance Regulation 172 (11 NYCRR 83) The Department does not believe that this rule will have any impact on jobs and employment opportunities, including self-employment opportunities. The rule codifies numerous accounting practices and procedures that had not previously been organized in such a unified and coherent manner. It adopts the most recent edition published by the National Association of Insurance Commissioners (“NAIC”) of the Accounting Practices and Procedures Manual As of March 2014 (“2014 Accounting Manual”), replacing the rule’s current reference to the Accounting Practices and Procedures Manual As of March 2013. The amendment also updates references to SSAP 10R to read SSAP 101, to reflect the same changes that were made by the NAIC as of January 1, 2012. The rule also makes technical corrections to Section 83.4(i).

All states require insurers to comply with the 2014 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers’ corporate and financial affairs, and that they have the necessary resources to carry out that authority.

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

Regulations Governing an Actuarial Opinion and Memorandum

I.D. No. DFS-23-14-00003-P

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

Proposed Action: This is a consensus rule making to amend Part 95 (Regulation 126) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 107, 301, 308, 310, 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 of proposed rule: Section 95.8(b)(6)(vi) is amended to read as follows:

(vi) Make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, to the extent not inconsis-

tent with Insurance Regulation 126 and conform to the requirements of such regulation.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.’’

or

“The following material change(s) that occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: [Describe the change or changes.]”

Note: Choose one of the above two paragraphs, whichever is applicable.

“This opinion is prepared for the use of company management and the New York Department of Financial Services for the purposes set forth in New York Insurance Law § 4217, and 11 NYCRR 95 (Insurance Regulation 126), as amended from time to time. This opinion covers *business inforce as of December 31, 20[]* and does not cover new business issued subsequent to this date. This opinion does not cover all matters needed to assess the future capital and surplus adequacy of the company.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company’s future experience may not follow all the assumptions used in the analysis.

 Signature of Appointed Actuary.

 Address of Appointed Actuary.

 Telephone Number of Appointed Actuary.

 Date Opinion is Signed.”

Text of proposed 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) 474-1483, email: jennifer.roig@dfs.ny.gov

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

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

Consensus Rule Making Determination

This amendment re-adds language that existed in the rule prior to its last amendment, which had been unintentionally removed, and updates that language by changing the reference to the year 19[] to 20[]. Thus, no person or entity is likely to object.

Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act (“SAPA”) § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or a Rural Area Flexibility Analysis.

Job Impact Statement

This amendment re-adds language that existed in the rule prior to its last amendment, which had been unintentionally removed, and updates that language by changing the reference to the year 19[] to 20[]. Amendment of the rule will not adversely impact job or employment opportunities in New York, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any insurer subject to the rule.

**New York State Gaming
 Commission**

NOTICE OF ADOPTION

Addition of a New Multi-Jurisdiction Lottery Game

I.D. No. SGC-14-14-00011-A

Filing No. 446

Filing Date: 2014-05-27

Effective Date: 2014-06-11

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

Action taken: Addition of new section 5007.15 to Title 9 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604, 1612(a) and 1617; and Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Addition of a new multi-jurisdiction lottery game.

Purpose: To permit the Commission to raise revenue for education with a new lottery game.

Substance of final rule: This amendment of Part 5007, Multi-Jurisdictional Games, of Subtitle T of Title 9 NYCRR will add a new Section 5007.15, to allow the New York State Gaming Commission (“Commission”) to offer the Cash 4 Life game.

The purpose of Cash 4 Life is the generation of revenue for education in New York through the operation of a multi-state lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly-scheduled drawings.

The new section of the Gaming Commission regulations describes the Cash 4 Life as a multi-jurisdictional lottery game similar to Powerball and the Mega Millions games that have been offered in New York and other states since 2002. Subdivision (a) sets forth some definitions. Subdivision (b) governs ticket pricing and the terms and conditions of ticket sales. Subdivision (c) describes the game. During each Cash 4 Life drawing, six Cash 4 Life Winning Numbers will be selected from two fields of numbers in the following manner: five winning numbers from a field of 60 numbers and one winning number from a field of numbers one through four, inclusive. The objective of Cash 4 Life drawings shall be to select at random, with the aid of drawing equipment, Cash 4 Life Winning Numbers, pursuant to the controls and methods established for the game. A player who matches all numbers is eligible for a jackpot prize.

Subdivision (d) sets forth play characteristics and restrictions. Subdivision (e) describes the time and place of drawings. Subdivision (f) details the prize structure and probabilities of winning. Subdivision (g) describes the payment options that may be chosen by a winner. Subdivision (h) governs the limits of payments and distribution of prizes when there are multiple winners. Subdivision (i) indicates that Parts 5003 and 5004 govern this new game. Subdivision (j) states that this new section applies only to the new Cash 4 Life game.

The full text of this proposed rule is posted on the Commission’s website, www.gaming.ny.gov.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 5007.15(j).

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, NY 12301-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

A Revised Regulatory Impact Statement, Regulatory Flexibility Analysis (RFA) for small business and local governments, Rural Area Flexibility Analysis (RAFA), and Job Impact Statement (JIS) are not required because the only change to the proposed text that was last published before this rule was adopted was a stylistic edit. Subdivision (j) of the rule was changed to lowercase the word “section” and to add the word “game” to “Cash 4 Life.”

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.

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

Statutory authority: Public Health Law, section 2999-j

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

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

Subject: NYS Medical Indemnity Fund.

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt 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. HLT-12-14-00014-P, Issue of March 26, 2014. The emergency rule will expire July 21, 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:

Title 4 of Article 29 of the Public Health Law (PHL) creates the New York State Medical Indemnity Fund (Fund) to provide a source of funding for all future qualifying health care costs of a plaintiff or claimant who sustained birth-related neurological injuries as the result of medical malpractice in order to reduce premium costs for medical malpractice insurance coverage.

Subdivision 3 of section 2999-h of the PHL sets forth a broad definition of “qualifying health care costs” for services and supplies provided to qualified plaintiffs and provides authority for the Commissioner of Health (Commissioner) to further define such qualifying health care costs in regulation.

Department of Health

EMERGENCY RULE MAKING

NYS Medical Indemnity Fund

I.D. No. HLT-12-14-00014-E

Filing No. 444

Filing Date: 2014-05-23

Effective Date: 2014-05-23

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

Section 2999-i of the PHL requires the Superintendent of Insurance (Superintendent) to administer the Fund and the Commissioner of Taxation and Finance to be the custodian of the Fund for which a special account is created pursuant to section 99-t of the State Finance Law. Subdivision 2 of section 2999-i of the PHL authorizes the Superintendent to enter into a contract to administer the Fund (Administrator) and subdivision 6 requires the Superintendent to conduct actuarial calculations of the estimated liabilities of the Fund and suspend enrollment in the Fund if the estimated liabilities equal or exceed 80% of the Fund's assets.

Section 2999-j of the PHL governs payments from the Fund and includes broad standards for the Fund enrollment process, payment of costs by collateral sources, rates to be paid to providers of qualifying health care services, prior authorization for certain services, and the claims processing requirements for reimbursement of qualifying health care costs. Subdivision 2 of section 2999-j of the PHL requires any applicable prior authorization requirements to be promulgated by the Commissioner in regulation and subdivision 4 of such section requires the Commissioner to define in regulation "the basis of one hundred percent of the usual and customary rates" to be paid for services provided by private physician practices and for all other services, any rates of payment to be paid on a basis other than Medicaid rates.

Lastly, subdivision 15 of section 2999-j of the PHL specifically states that the Commissioner, in consultation with the Superintendent, "shall promulgate. . . all rules and regulations necessary for the proper administration of the fund in accordance with the provisions of this section, including, but not limited to those concerning the payment of claims and concerning the actuarial calculations necessary to determine, annually, the total amount to be paid into the fund as otherwise needed to implement this title."

Legislative Objectives:

The Legislature delegated the details of the Fund's operation to the Department of Financial Services (DFS) and the Department of Health (DOH), the two State agencies that have the appropriate expertise to develop, implement and enforce all aspects of the Fund's operations. These proposed regulations reflect the collaboration of both agencies in providing the administrative details of the manner in which the Fund will operate. Specifically, the regulations provide a clear process for enrollment of plaintiffs or claimants who sustained birth-related neurological injuries as the result of medical malpractice. And they create standards governing the qualifying health care costs to be paid by the Fund and the rates at which they will be paid, keeping in mind the two Legislative objectives of lifetime coverage for all current and future enrollees and reducing premium costs for medical malpractice insurance coverage.

Needs and Benefits:

These regulations are needed because Title 4 of Article 29 of the PHL provides only broad standards governing operation of the Fund, some of which include a specific requirement to further define criteria in regulation, and to provide the details necessary to make the Fund operationally successful for all parties, including qualified plaintiffs, Fund enrollees, providers of qualifying health care services, the Administrator, and the two agencies charged with operating the Fund. All parties will benefit from specific standards governing their respective roles regarding the Fund by providing: (1) a smooth application and enrollment process, including specific requirements for the actuarial calculations to be made by DFS and any ensuing suspension of enrollment in the Fund; (2) a clear concept of the qualifying health care costs for which the Fund will pay and their applicable rates of payment; (3) a step-by-step prior approval process required only for certain costly services, including environmental modifications, vehicle modifications, assistive technology, private duty nursing, transportation for medical care and services, treatment with a specialty drug, and experimental treatment; (4) a claims submission process that allows timely payment to providers; and (5) a fair review process if an enrollee's claims or prior authorization requests are denied, including document based reviews and hearings conducted by DOH.

Costs to Regulated Parties:

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

Costs to the Administering Agencies, the State, and Local Governments:

Costs to administering agencies and the State associated with the Fund will be covered by applicable appropriations, as provided in subdivisions 3 through 5 of section 2999-i of the PHL. There are no costs imposed on local governments by these regulations.

Local Government Mandates:

The proposed regulations do 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 regulations impose paperwork requirements on regulated parties by requiring (1) a qualified applicant, person authorized to act on

behalf of a qualified applicant, or certain defendants to submit an application and supporting documentation for a qualified applicant's enrollment into the Fund; (2) an enrollee to submit electronic or manual claims for reimbursement of qualified health care services, documentation to support any prior approval request and payment thereof, a review request form for denial of a claim or prior approval request, and notice of a change in address; (3) DOH to issue a notice of hearing, if applicable; and (4) DFS to issue a notice of any suspension or reinstatement of enrollment into the Fund.

Duplication:

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

Alternatives:

DFS and DOH have considered multiple alternatives to the proposed regulatory requirements and have made recent changes to the Express Terms to reflect more reasonable approaches to certain situations enrollees might face. For example:

(1) In the case of divorced parents, the regulations used to allow environmental modifications only to the primary residence of a custodial parent. The agencies considered the limitation placed on a child's ability to spend time at the home of the noncustodial parent and changed the Express Terms to allow environmental modifications to the primary residence of a noncustodial parent.

(2) When the Administrator received a request for approval of environmental modifications to a home that had yet to be built, the regulations had no process to allow for such approval. The agencies considered the benefit to families in having adaptations built in for their child making the home move-in ready on completion, in addition to the cost effectiveness of environmental modifications made during construction, as opposed to after construction, and changed the Express Terms to provide an approval process for these types of requests.

(3) The prior approval process for assistive technology used to require 3 acceptable bids for every item requested. The agencies considered this process to be cumbersome for less costly items, especially when prices are readily available in catalogues or online, and changed the Express Terms to allow for the submission of 3 prices in lieu of 3 bids for items costing less than \$2500.

Federal Standards:

There are no minimum Federal standards regarding this subject.

Compliance Schedule:

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

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

Cure Period:

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

Rural Area Flexibility Analysis

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

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

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

Adult Day Health Care Programs and Managed Long Term Care

I.D. No. HLT-35-13-00003-RP

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

Proposed Action: Amendment of Part 425 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201(1)(v) and 2803(2); and Social Services Law, section 363-a(2)

Subject: Adult Day Health Care Programs and Managed Long Term Care.

Purpose: To create a hybrid model of adult day health care.

Substance of revised rule: The amendments make a number of changes to 10 NYCRR Part 425, governing the operation and payment of adult day health care (ADHC) programs in residential health care facilities. The purpose of the amendments is to enable such programs to contract and work effectively with managed long term care (MLTC) plans and care coordination models (CCMs) as more Medicaid recipients are required to enroll in MLTC plans and CCMs. The amendments also allow ADHC programs to offer an Unbundled Services/Payment Option, in which individuals requiring ADHC services and individuals requiring less than the full range of ADHC services can both receive services in the adult day health care program space.

Section 425.1

Amendments are made to the definitions of “Registrant,” “Operating hours for an adult day health care program,” and “Visit,” and new definitions of “Care coordination model,” “Comprehensive assessment,” “Care plan,” and “Unbundled Services/Payment Option” are added.

Section 425.3

Amended to allow operators of approved ADHC programs to elect the Unbundled Services/Payment Option.

Sections 425.4, 425.5, 425.6, 425.7, 425.8, 425.10, 425.12, 425.14, and 425.16

As part of their responsibility to manage and coordinate the health care needs of their enrollees, MLTC plans and CCMs provide certain services that ADHC programs are also required to provide for their registrants. Amendments are made to these regulatory sections to avoid duplication of services with respect to ADHC registrants who are referred to the ADHC program by an MLTC plan or CCM.

Section 425.23

A new section 425.23 is added, with respect to payments to ADHC programs, to allow a MLTC plan or CCM to order less than the full range of adult day health care services for a particular enrollee, based on an enrollee’s individual medical needs as determined in the comprehensive assessment performed by the MLTC plan or CCM, and to enter into reimbursement arrangements with the ADHC program operator that take into account a registrant’s receipt of less than the full range of adult day health care services.

Revised rule compared with proposed rule: Substantial revisions were made in sections 425.1, 425.3, 425.4, 425.6, 425.7, 425.9, 425.10, 425.12, 425.13 and 425.20.

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:

Section 2803(2)(a)(v) of the Public Health Law authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to medical facilities, including nursing homes. Section 201(1)(v) of the Public Health Law and section 363-a of the Social Services Law provide that the Department is the single state agency responsible for supervising the administration of the State’s medical assistance (“Medicaid”) program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State’s Medicaid program.

Legislative Objective:

Chapter 59 of the Laws of 2011 enacted a number of provisions of the Medicaid Redesign Team (MRT). One of these provisions calls for the mandatory enrollment of additional categories of Medicaid recipients into managed long term care (MLTC) plans or other care coordination models

(CCMs). The amendments change a number of provisions in 10 NYCRR Part 425, governing the operation and payment of adult day health care (ADHC) programs in residential health care facilities, to remove regulatory obstacles to those programs transitioning from being primarily fee-for-service Medicaid providers to being providers that can contract and work effectively with MLTC plans and CCMs.

Needs and Benefits:

The amendments provide that the MLTC plan or CCM that refers an enrollee to an ADHC program will be responsible for meeting certain Part 425 requirements that are currently the responsibility of the ADHC program operator, consistent with the MLTC plan’s or CCM’s responsibility to manage and coordinate the enrollee’s health care needs. This will avoid having the ADHC program operator duplicate services that are required to be provided by MLTC plans and CCMs to their enrollees.

The amendments clarify that the full range of ADHC services are available to MLTC plan and CCM enrollees with a medical need for such services. This ensures that Medicaid-covered ADHC services provided through an MLTC plan or CCM remain equal in amount, duration, and scope to ADHC services available to recipients of fee-for-service Medicaid.

However, the regulations also allow an MLTC plan or CCM, based on an enrollee’s individual medical needs, as determined in the comprehensive assessment performed by the MLTC plan or CCM, to order less than the full range of adult day health care services, and to enter into reimbursement arrangements with the ADHC program operator that take into account a program registrant’s receipt of less than the full range of adult day health care services. The rule allows MLTC plans and CCMs to order, and ADHC programs to provide, only the needed individualized services identified in the registrant’s comprehensive assessment and care plan, at a negotiated price that both the MLTC plan/CCM and the ADHC program can afford.

Finally, the amendments allow ADHC programs to elect the Unbundled Services/Payment Option, which permits a program to admit and serve functionally impaired individuals who may need less than the full range of adult day health care services. This gives these programs flexibility in their operations and permits them to more effectively contract with managed long term care (MLTC) plans.

Costs to the Department, the State, and Local Government:

The rule will not increase costs to the State or local governments.

Local Government Mandates:

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

Paperwork:

The rule will not impose any additional paperwork for ADHC programs.

Duplication:

There are no duplicative or conflicting rules identified.

Alternative:

No alternatives were proposed to the Department or considered.

Federal Standards:

The regulations do not exceed any minimum federal standards.

Compliance Schedule:

ADHC programs should be able to comply with the regulations when they become effective.

Revised Regulatory Flexibility Analysis

Effect of Rule:

The rule can potentially affect 165 adult day health care (ADHC) programs across the state. It will not affect any local government entities. The rule allows an ADHC program approved to operate by the State of New York to elect the Unbundled Services/Payment Option, thus permitting the program to admit and serve functionally impaired individuals who may need less than the full range of adult day health care services. It also allows these programs flexibility in their operations and permits them to more effectively contract with managed long term care (MLTC) plans. Since selecting the Unbundled Services/Payment Option is voluntary on the part of any ADHC program, it is impossible to know how many of the 165 programs will be affected. They may exercise this option as MLTC is expanded across the state and their decision to do so will be based on individual program experience, the location of the program and other community-based services available in their geographic area.

Compliance Requirements:

In order to exercise the Unbundled Services/Payment Option, the ADHC program will have to notify the Department in writing, thirty days in advance of implementation that they plan to exercise this option. ADHC programs are currently required by regulation to meet certain reporting and recordkeeping requirements, and these activities will not be increased for a program that elects this option.

Professional Services:

ADHC programs currently employ, either directly or through a contract, nurses; social workers; physical, occupational and speech therapists; certi-

fied nursing assistants; activities and dietary staff. These same types of individuals will continue to be employed since any ADHC program must have a full range of services available based on the needs of the population they serve. However, programs will be able to adjust their staffing based on the range of services needed on any given day.

Compliance Costs:

There are no direct or increased compliance costs as a result of this rule.

Economic and Technological Feasibility:

This rule will not change how ADHC providers serve or bill for registrants for whom they receive a fee-for-service Medicaid payment. Therefore, it will not have an impact on the program's technological needs for these registrants. The number of individuals for whom a fee-for-service payment is received is likely to decrease as individuals are enrolled in MLTC plans, and thus the number of direct billings attributable to ADHC to the State will also decrease. The decrease in the number of fee-for-service registrants will have a negative economic impact on ADHC providers. This rule will permit ADHC programs to address this by allowing them to offer less than the full range of adult day health care services and more effectively contract with MLTC plans. ADHC providers may have to improve their technology in order to bill and effectively communicate with the MLTC plans that they contract with, but these changes are not the result of this rule. Any need to increase their technology, in this instance, is the result of the changes in the long term care market in general and the expansion of MLTC plans.

Minimizing Adverse Impact:

There will be no adverse impact on local government. The rule is designed to allow ADHC program operations to be more flexible. Further, it will allow ADHC programs and the registrants they serve to more effectively adjust to the statutory mandate requiring the expansion of MLTC.

Small Business and Local Government Participation:

The rule reflects the Department's collaboration with the Adult Day Health Care Council, which is a trade association representing more than 90 percent of the ADHC programs operating in New York State. Members of the Council helped develop the concept of an Unbundled Services/Payment Option and had the opportunity to contribute to and comment on the concepts presented in this rule.

Revised Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

All rural areas of the state in which adult day health care (ADHC) programs are located will be equally affected by this rule. There are approximately 41 programs operating in rural counties.

Reporting, Recordkeeping and Other Compliance Requirements; Professional Services:

For ADHC programs, no new reporting, recordkeeping or other compliance requirements are being imposed as a result of this rule. The only new requirement, should an ADHC program opt to utilize the Unbundled Services/Payment Option, will be to notify the Department of that decision in writing.

Costs:

No direct costs will be imposed as a result of this rule.

Minimizing Adverse Impact:

There will be no adverse impact on rural areas. Implementation of this rule will benefit managed long term care plans expanding to rural areas that will need to include medical and social model programs in the benefit package. By allowing ADHC programs to provide less than the full range of adult day health care services to functionally impaired individuals, the rule enables the programs to serve a larger population. This may prevent program closures and the displacement of registrants to nursing facilities, while providing continuity of care as registrants may receive different levels of treatment in one setting.

Rural Area Participation:

The Department participated in multiple meetings with the Adult Day Health Care Council which represents more than 90 percent of the ADHC programs in the state, including the 41 programs operating in rural areas.

Revised Job Impact Statement

Nature of Impact:

The statutory mandate requiring the expansion of Managed Long Term Care (MLTC) will likely have a negative impact on adult day health care (ADHC) programs. As MLTC expands, enrollment in ADHC programs as currently structured may significantly decrease. This could result in the downsizing of programs and staff, closures and displacement of the registrants. The rule was designed to mitigate such an impact by providing ADHC programs flexibility in their operations and permitting them to more effectively contract with MLTC plans. The rule, therefore, could prevent job loss that might otherwise occur if it is not adopted.

Categories and Numbers Affected:

The staff affected by the proposal include: nurses; certified nursing assistants; physical, occupational and speech therapists; social workers; dietary/food service workers; housekeeping and activity professionals.

Regions of Adverse Impact:

Adoption of the rule will not result in an adverse impact on jobs or employment. The rule permits ADHC programs to select an Unbundled Services/Payment Option through which they deliver their services. Selection of this option is voluntary, and will be based on individual program experience and choice. Therefore, it is impossible to know how many programs or which regions of the state would be affected.

Minimizing Adverse Impact:

One of the reasons the Department wishes to adopt this rule is to minimize any adverse impact on ADHC registrants and programs which may result from the mandatory expansion of MLTC plans.

Assessment of Public Comment

The proposed rulemaking published in the New York State Register on August 28, 2013 would have created a hybrid option for Adult Day Health Care programs to authorize programs to offer services to those who are functionally impaired but do not need skilled nursing or other medical services. The intention was to provide flexibility to programs and participants as New York State continues the implementation of managed long term care while ensuring continuity of care.

During the public comment period, the Department received well over 300 comments regarding the proposal. While the majority of comments received fully supported the hybrid model, many comments supported the flexibility of a hybrid option but had many specific concerns with the proposal.

Such concerns included how a hybrid program would meet the needs of all registrants, confusion about the responsibilities of the program versus the responsibilities of the managed long term care plan or the care coordination model and confusion over which registrants would receive which services. In addition, many comments expressed concern with increasing the total daily capacity from 10 percent over the approved capacity for the program to 30 percent over the approved capacity. Most concerns revolved around ensuring that each adult day health care participant receive the care and services they need based upon a comprehensive assessment and individualized care plan.

The Department met several times with the New York State Adult Day Health Care Council and the New York State Adult Day Services Association to develop a revised proposal that addressed many of the concerns expressed through public comment yet still provided a more flexible option for adult day health care in a managed long term care environment.

Several commenters expressed concern that the proposal would result in simply inserting social model participants into a medical model program without adopting the regulations, standards and philosophy governing these programs, ultimately not improving the quality of care. This was never the intention of the proposal. The intention was to allow a managed long term care plan or care coordination model to order, and for an adult day health care program to provide, less than the full range of adult day health care services as determined in an individual's comprehensive assessment.

Therefore, the Department has revised the proposal by removing the definitions of "Hybrid Option" and "Social Adult Day Level Individual" and instead added a new definition of "Unbundled Services/Payment Option" to grant programs the ability to provide less than the full range of adult day health care services to functionally impaired individuals referred by a managed long term care plan or care coordination model. The Department must still be notified of a program's election of this option 30 days in advance. As was the case before, the full range of adult day health care services will remain available to all registrants. In addition, each registrant will be provided a written copy of the services they are to receive while attending the program at the time of admission and following the continued-stay evaluation.

Additional revisions include removing the allowance to admit up to 30 percent over the approved program capacity, and changing it back to 10 percent, and clarifying which entity is responsible for each service—either the adult day health care program and/or the managed long term care plan or care coordination model.

Below are some additional comments received during the public comment period.

COMMENT: Who determines which registrant will get which services? Are registrants only those with a medical need? It is not clear how the Hybrid model will meet the needs of each individual.

RESPONSE: Any individual enrolled in an adult day health care program is considered a registrant, regardless of the services they receive. Core services, as outlined in Section 425.5, must be available to all registrants. All registrants will have a person-centered care plan which outlines the services they receive based on their comprehensive assessment.

COMMENT: The caregiver is not included as part of the care plan.

RESPONSE: While not mandated, the caregiver as well as any caregiver issues certainly may be part of the individual's care plan.

COMMENT: Will the RN/LPN evaluate the need for services for every registrant even if there is no medical need?

RESPONSE: Yes, unless this has already been performed by the referring managed long term care plan or care coordination model and is not necessary at that time. As all adult day health care programs are required to have a registered professional nurse on site during all hours of operation, the appropriate staff will be available to evaluate all registrant needs, including medical needs, as they may arise. In this effort, communication between the program and the managed long term care plan or care coordination model will be crucial.

COMMENT: Will staff be able to provide medication administration to social clients?

RESPONSE: Yes, within the current scope of practice and as prescribed within the registrant's care plan.

COMMENT: The proposal does not specify any approval process for adult day health care programs that choose the Hybrid model, nor is the program required to have any prior experience in the provision of social level adult day services.

RESPONSE: Adult day health care programs already do provide social level services in addition to medical services. This rule simply allows them to unbundle those services and charge for them accordingly. At this time, the Department will only require the advanced notification regarding the selection of the Unbundled Services/Payment Option. Should it become apparent that a more stringent approval process is needed, that will be addressed at that time.

COMMENT: It is unclear if a registrant care plan must be developed for social adult day care level individuals.

RESPONSE: This has been clarified in the revised rulemaking. A care plan shall be developed for each registrant.

COMMENT: The proposal should provide for periodic assessments of the continued appropriateness of individual written care plans and program evaluations of the overall impact of the adult day health care setting on social participants.

RESPONSE: The regulation does require a registrant continued-stay evaluation in Section 425.8. It should be noted that any good care plan would already require this.

COMMENT: Will the care plan completed by the managed long term care plan be a substitute for the care plan of the certified home health agencies (CHHAs) and other providers required to produce care plans?

RESPONSE: No.

COMMENT: The proposal does not include a process for resolving disagreements between the managed long term care plan/care coordination model and the adult day health care program.

RESPONSE: Correct. There is no need for a specific process. Any disagreements should be resolved between the two entities. It is anticipated that this would be a part of their contractual relationship.

COMMENT: Require an adult day health care program to submit proof that the program's physical plant and staffing levels are sufficient to increase the total daily census by up to 30 percent.

RESPONSE: This is no longer relevant as the 30 percent allowance has been changed back to 10 percent.

COMMENT: Assisted Living Programs and Enriched Assisted Living Residences should be allowed to offer both social and medical adult day health care to seniors living in the community.

RESPONSE: We are evaluating this issue for possible action at a later time.

COMMENT: The Department should require the nursing home to update its information on file to explain how it will operate and integrate the new "social" day care program into its existing "medical" day care program.

RESPONSE: Nursing homes are free to update their information on file at any time.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Statewide Planning and Research Cooperative System (SPARCS)

I.D. No. HLT-35-13-00004-RP

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

Proposed Action: Amendment of section 400.18 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2816

Subject: Statewide Planning and Research Cooperative System (SPARCS).

Purpose: Delete obsolete language, realign to current practice, add new provisions, including mandated outpatient clinic data collection.

Text of revised rule: A new title of Section 400.18 is added and a new Section 400.18 is added to read as follows:

10 NYCRR § 400.18 Statewide Planning and Research Cooperative System (SPARCS).

(a) Definitions. For the purposes of this section, these terms shall have the following meanings:

(1) Health care facilities shall mean facilities licensed under Article 28 of the Public Health Law.

(2) Identifying data elements shall mean those SPARCS and Patient Review Instrument (PRI) data elements that, if disclosed without any restrictions on use or re-disclosure would constitute an unwarranted invasion of personal privacy. A list of identifying data elements shall be specified by the Commissioner and will be made available publicly.

(3) Inpatient hospitalization data shall mean SPARCS data submitted by hospitals for patients receiving inpatient services at a general hospital that is licensed under Article 28 of the Public Health Law and that provides inpatient medical services.

(4) Outpatient data shall mean emergency department data, ambulatory surgery data, and outpatient services data.

(i) Emergency department data shall mean SPARCS data submitted by a facility licensed to provide emergency department services under Article 28 of the Public Health Law.

(ii) Ambulatory surgery data shall mean SPARCS data submitted by a facility licensed to provide ambulatory surgery services under Article 28 of the Public Health Law.

(iii) Outpatient services data shall mean all data submitted by licensed Article 28 facilities excluding inpatient hospitalization data, emergency department data, and ambulatory surgery data.

(5) Patient Review Instrument (PRI) data shall mean the data submitted on PRI forms by residential health care facilities, pursuant to section 86-2.30 of this Title.

(6) SPARCS Administrator shall mean a person in the SPARCS program designated by the Commissioner to act as administrator for all SPARCS activities.

(7) SPARCS data shall mean the data collected by the Commissioner under section 2816 of the Public Health Law and this section, including inpatient hospitalization data and outpatient data.

(8) SPARCS program shall mean the program in the New York State Department of Health (NYSDOH) that collects and maintains SPARCS data and discloses SPARCS and Patient Review Instrument (PRI) data.

(b) Reporting SPARCS data.

(1) Health care facilities shall report data as follows:

(i) Health care facilities shall submit, or cause to have submitted, SPARCS data in an electronic, computer-readable format through NYSDOH's secure electronic network according to the requirements of section 400.10 of this Part and the specifications provided by the Commissioner.

(ii) All SPARCS data must be supported by documentation in the patient's medical and billing records.

(iii) Health care facilities must submit on a monthly basis to the SPARCS program, or cause to have submitted on a monthly basis to the SPARCS program, data for all inpatient discharges and outpatient visits. Health care facilities must submit, or cause to have submitted, at least 95 percent of data for all inpatient discharges and outpatient visits within sixty (60) days from the end of the month of a patient's discharge or visit.

Health care facilities must submit, or cause to have submitted, 100 percent of data for all inpatient discharges and outpatient visits within one hundred eighty (180) days from the end of the month of a patient's discharge or visit.

(iv) The SPARCS program may conduct an audit evaluating the quality of submitted SPARCS data and issue an audit report to a health care facility listing any inadequacies or inconsistencies in the data. Any health care facility so audited must submit corrected data to the SPARCS program within 90 days of the receipt of the audit report.

(2) Content of the SPARCS data.

(i) Health care facilities shall submit, or cause to have submitted, uniform bill data elements as required by the Commissioner. The data elements required by the Commissioner shall be based on those approved by the National Uniform Billing Committee (NUBC) or required under national electronic data interchange (EDI) standards for health care transactions and shall be published on the NYSDOH website.

(ii) Health care facilities shall submit, or cause to have submitted, additional data elements as required by the Commissioner. Such additional data elements shall be from medical records or demographic information maintained by the health care facilities.

(iii) The list of specific SPARCS data elements and their definitions shall be maintained by the Commissioner, will be made available publicly, and may be modified by the Commissioner.

(c) Maintenance of SPARCS data.

The Commissioner shall be responsible for protecting the privacy and security of the health care information reported to the SPARCS program.

(d) Requests for SPARCS and PRI data.

(1) SPARCS and PRI data may be used for medical or scientific research or statistical or epidemiological purposes approved by the Commissioner.

(2) The Commissioner may determine that additional purposes are proper uses of SPARCS and PRI data.

(3) In determining the purpose of a request for SPARCS and PRI data, the SPARCS program shall not be limited to information contained in the data request form and may request supplemental information from the applicant.

(4) The Commissioner shall charge a reasonable fee to all persons and organizations receiving SPARCS and PRI data based upon costs incurred and recurring for data processing, platform/data center and software. The Commissioner may discount the base fee or waive the fee upon request to the SPARCS program. The fee may be waived in the following circumstances:

(i) Use by a health care facility of the data it submitted to the SPARCS program.

(ii) Use by a health care facility that is licensed under Article 28 of the Public Health Law for the purpose of rate determinations or rate appeals and for health care-related research.

(iii) Use by a Federal, New York State, county or local government agency for health care-related purposes.

(5) The SPARCS program shall follow applicable federal and state laws when determining whether SPARCS and PRI data contain identifying data elements may be shared and whether a disclosure of SPARCS and PRI data constitutes an unwarranted invasion of personal privacy.

(6) All entities seeking SPARCS and PRI data must submit a request to the SPARCS program using standard data request forms specified by the SPARCS program. Data users shall take all necessary precautions to prevent unwarranted invasions of personal privacy resulting from any data analysis or release. Data users may not release any information that could be used, alone or in combination with other reasonably available information, to identify an individual who is a subject of the information. Data users bear full responsibility for breaches or unauthorized disclosures of personal information resulting from use of SPARCS or PRI data. Applications for SPARCS or PRI data must provide an explicit plan for preventing breaches or unauthorized disclosures of personal information of any individual who is a subject of the information.

(7) Each data request form must include an executed data use agreement in a form prescribed by the SPARCS program. Data use agreements are required of: a representative of the requesting organization; a representative of each other organization associated with the project; and all individuals who will have access to any data including identifying data elements.

(8) The SPARCS program shall publish and make publicly available the name of the project director, the organization, and the title of approved projects.

(9) The SPARCS Administrator shall review and make recommendations on requests for SPARCS and PRI data containing identifying data elements to a data release committee established by the Commissioner. The data release committee shall have at least three members, including at least one member not otherwise affiliated with NYSDOH. The members of the data release committee shall be posted on the NYSDOH website. Requests will be granted only upon formal, written approval for access by a majority of the members of the data release committee. The Commissioner has the final authority over the approval, or disapproval, of all requests. Requests for identifying data elements shall be approved only if:

(i) The purpose of the request is consistent with the purposes for which SPARCS and PRI data may be used;

(ii) The applicant is qualified to undertake the project; and

(iii) The applicant requires such identifying data elements for the intended project and is able to ensure that patient privacy will be protected.

(10) The SPARCS Administrator may recommend approval of a request in which future SPARCS data is to be supplied on a periodic basis under the following conditions:

(i) SPARCS data may be requested for a predetermined time not to exceed three years beyond the current year provided that the organization and uses of the data remain as indicated in the data request form submitted to the SPARCS program.

(ii) During the period of retention of SPARCS or PRI data, no additional individuals may access SPARCS or PRI data without an executed data use agreement on file with the SPARCS program.

(11) The Commissioner may rescind for cause, at any time, approval of a data request.

(e) Penalties.

(1) Any person or entity that violates the provisions of this section or any data use agreement may be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12-d of the Public Health Law.

(2) Any person or entity that violates the provisions of this section or any data use agreement may be denied access to SPARCS or PRI data.

Appendix C-2 is repealed.

Appendix C-3 is repealed.

Appendix C-4 is repealed.

Appendix C-5 is repealed.

Section 755.10 is repealed.

Section 405.27 is repealed.

Section 400.14(b) is amended to read as follows:

(b) All requests for [deniable individual or aggregate] PRI data shall be processed pursuant to section 400.18 [(e)] of this Part.

Section 407.5(g) is amended to read as follows:

(g) Information policy and other reporting requirements.

PCHs/CAHs shall comply with the provision of section [405.27] 86-1.2, 86-1.3 and 400.18 of this Title regarding information policy and other reporting requirements.

Revised rule compared with proposed rule: Substantial revisions were made in section 400.18(a)(2), (b)(1)(iv), (v), (2)(i), (ii), (d)(7), (8), (9) and (10).

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.

Summary of Revised Regulatory Impact Statement

There are five objectives for the revision of 10 NYCRR Section 400.18: 1) deleting obsolete language; 2) realigning the regulation to reflect current practices; 3) adding new provisions, including provisions for the mandated outpatient services data collection; 4) adding provisions to assure data completeness and quality; and 5) improving access to data. The first two objectives are the main reasons for the extensive and substantial changes to the regulations. The third objective is necessitated by the 2006 revision to PHL Section 2816 requiring a new type of data to be collected. The fourth and fifth objectives support Statewide initiatives to promote access to data (consistent with all applicable privacy laws and regulations) including the Governor's Open Data Portal, an initiative that supports and promotes greater data transparency and health department data promotion efforts such as the new health open data site -- Health Data NY.

Statutory Authority:

The Statewide Planning and Research Cooperative System (SPARCS) has been in existence for thirty-five years as a nationally recognized health information dataset. From its start in 1979, the authority to collect data from health facilities was established in Section 405.30 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York. This Section, repealed in 1988 and replaced with the current Section 400.18, specifies the procedures for the collection and disclosure of SPARCS and Patient Review Instrument (PRI) data.

In 1985, Section 97-x of the State Finance Law was established to fund SPARCS with fees collected from hospitals. In 2001, SPARCS was established in Section 2816 of the Public Health Law (PHL). At the same time, the stipulation was added that emergency department data was to be collected from general hospitals. Section 97-x of the State Finance Law was also amended to refer to PHL Section 2816.

On April 12, 2006, Section 2816(2)(a)(iv) was added to authorize the collection of outpatient services data from all licensed Article 28 general hospitals and diagnostic and treatment centers (D&TCs) operating in New York State. With the 2006 revision to Section 2816, the Commissioner of the New York State Department of Health (NYSDOH) is authorized to promulgate regulations to implement the collection of outpatient services data.

Legislative Objectives:

These regulations support open government initiatives and transparency while continuing to assure confidentiality and security. The Data Protection Review Board, originally established to review data requests, assure appropriate privacy standards are met and authorize data sharing will be replaced by a NYSDOH administered process that includes a data review committee consisting of at least three members, including at least one member not otherwise affiliated with NYSDOH. This will facilitate timely access to requested data and at the same time assure data privacy and confidentiality consistent with all applicable State and Federal laws and regulations. These laws were not in place at the time SPARCS and the DPRB process were first initiated.

These regulations will support sharing of data collected by the Department on public websites such as the "Open New York" initiative and the Health Data NY initiative, subject to stringent privacy protections outlined in regulation and consistent with HIPAA standards, and will streamline and promote timely access to data by external researchers.

The proposed regulations are required to assure compliance with laws that mandate collection of outpatient services visit data in order to support the accuracy and completeness of Medicaid claims data. Collection of this information is necessary to comply with federal requirements for disproportionate share hospital (DSH) payments (\$3.2 billion program, see, 42 USC § 1396r-4) and provide benchmarking capabilities for the State’s ambulatory care reimbursement system (enhanced ambulatory patient groups or EAPGs) and benchmarking of outpatient pricing methodologies. The outpatient services data will assist in updating procedure weights, assist in creating procedure base rates, and potentially recalculating provider-specific payments for blend in the outpatient setting.

In addition these regulations support timeliness and completeness and assure that the data collected support open government initiatives and transparency while continuing to assure confidentiality and security. The regulations reflect a move to assign responsibility for review and approval of data requests, including assuring that appropriate privacy standards are met, to the Department and the Commissioner rather than an external body. This change is recommended to promote, streamline and facilitate timely access to requested data in a manner that ensures data privacy and confidentiality consistent with all applicable State and Federal laws and regulations (laws such as HIPAA that were not in place at the time SPARCS was first initiated).

Needs and Benefits:

There are five objectives for revising the regulation:

- 1) Deleting obsolete language (out of date lists of data elements collected by SPARCS);
- 2) Realigning regulation to reflect current practices. In 1996, HIPAA established national standards for health data reporting. SPARCS’ current input data format, ANSI X12-837, is a HIPAA-compliant data set, which is a subset of data elements as found in the national reporting standard;
- 3) Adding new provisions, including provisions for the mandated outpatient services data collection;
- 4) Adding new language to promote data completeness and accuracy. The revised Section 400.18 seeks to increase the quality and timeliness of the SPARCS data and will allow audits of SPARCS data to be conducted to determine the accuracy of the data submitted. If an audit is conducted, an audit report will be generated outlining any deficiencies. Health care facilities will have 90 days to replace any data found to be incorrect; and
- 5) Refining language to facilitate sharing of data consistent with HIPAA privacy protections in a manner that promotes transparency and use of Department data to further the health and well-being of all New Yorkers.

Costs:

For the past thirty five years, for SPARCS purposes, regulated entities have been Article 28 hospitals and D&TCs licensed to perform ambulatory surgery. The success of SPARCS has been due to the close alignment of the claim format that facilities must employ in their financial environment and SPARCS reporting requirements.

The Legislature mandated, in PHL 2816(2)(a)(iv) the collection of outpatient services. As an existing “type of data” that facilities have already been reporting through their financial/billing systems, it is expected that the associated costs will be minimal.

Local Government Mandates:

Article 28 facilities operated by local governments will be required to submit SPARCS data in the same manner as other Article 28 facilities.

Paperwork:

Paperwork associated with the data-reporting requirement is expected to be minimal.

Duplication:

The regulation will not duplicate, overlap, or conflict with federal or state statutes or regulations. Other state systems collecting health care facility data are payer or disease-specific. SPARCS data differ in that the data are collected from all payers and for all diseases and procedures.

Alternatives:

Refinements made to assure consistency with HIPAA are required. The collection of outpatient services data is mandated by law. There are no timely alternatives for the collection of these data.

Federal Standards:

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

Compliance Schedule:

Article 28, Section 2816(2)(a)(iv) became effective in April 2006. SPARCS began to collect outpatient services data for the discharge/visit year 2011.

There are other sections of Title 10 repealed or amended to conform to the revision of Section 400.18:

Section 755.10 will be repealed. The content of this section has been incorporated into the proposed Section 400.18.

Section 405.27 will be repealed. The content of this section has been incorporated into the proposed Section 400.18 and Section 86-1.2, and Section 86-1.3.

Section 400.14(b) will be amended to conform to the revised Section 400.18.

Section 407.5(g) will be amended to add citations to Section 86-1.2 and Section 86-1.3 in place of the repealed Section 405.27.

Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published RFA.

Revised Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>). Approximately 17% of small health care facilities are located in rural areas.

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

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

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

The majority of the revisions of Section 400.18, i.e., address deletion of obsolete language and update the regulation to reflect current practices, and will not adversely impact health care facilities in rural areas. The addition of the provision to collect a new data type, outpatient services data, was addressed through training initially provided during 2011 and that will be provided in the future via a web based environment.

In addition, SPARCS will provide a specialized time schedule for any facility that is upgrading their system or undergoing a system transition to electronic medical records.

The greatest impact in a rural area would occur if a small facility continued to maintain paper medical and billing records. A survey found most small health care facilities have some electronic form of recordkeeping due to the requirements of most insurance companies that bills be submitted electronically which should alleviate any additional costs and support effective submission of the required outpatient data.

Costs:

The cost of compliance with outpatient services data collection requirement for rural-area facilities should be minimal. As the SPARCS file is generated from the existing health care facilities’ records, all facilities with electronic billing programs should incur minimal or no increased reporting costs.

Facilities currently submitting data to SPARCS will have little increased capital costs except for minor changes to their existing billing systems. For new submitters that need to improve their electronic billing capabilities, they may incur custom computer additions to their existing billing programs.

Minimizing Adverse Impact:

There was a focused effort on training prior to the commencement of data collection. SPARCS will continue to provide training for SPARCS coordinators to assist them in reporting the data. In addition, training will be provided to the vendors who will be involved in data submission.

Hospitals have been submitting data to SPARCS for thirty five years. Most hospital outpatient departments have computer systems that are already integrated into the main hospital system or are in the process of being integrated. Thus, the computer program logic has been created, and the additional flow of information should be of minimal impact.

Rural Area Participation:

Regional meetings were held to inform and obtain comments from health care facilities located in all areas of the state.

Although some may view this reporting requirement as an additional burden, there are also benefits for the facilities. A facility's own data will be available free of charge for that facility. In addition, SPARCS allows access to health care information that all can use.

Revised Job Impact Statement**Nature of Impact:**

Very little impact on jobs is expected. To the extent that there is an impact, the addition of the outpatient data submission requirement will positively impact jobs and employment opportunities. For those reporting health care facilities requiring a custom computer program to create the SPARCS file, either their existing billing program will need modification by internal IT staff, or an external vendor will be required to create a custom program. For those health care facilities that will switch to electronic records, there will be increased business in sales and customization of the billing programs.

Categories and Numbers Affected:

The jobs created will be computer programming positions, sales positions, and technical training positions. SPARCS conducted surveys of the health care facilities impacted by this mandate, and 574 hospital-affiliated health clinics responded regarding their ability to submit data electronically. Of those, 96% reported that they submit some or all of their claims electronically.

Regions of Adverse Impact:

The revised section 400.18 will have no adverse impact on jobs or employment opportunities.

Minimizing Adverse Impact:

As the revised section 400.18 has no adverse impact on jobs or employment opportunities, there is no need to minimize adverse impacts.

Self-Employment Opportunities:

In very few instances, health care facilities may rely on self-employed programmers to develop the needed programming to submit and correct SPARCS data. To date, we have had only one instance of this over SPARCS' 35-year, data-collection history.

Assessment of Public Comment

The Department of Health received comments from the Data Protection Review Board, The Greater New York Hospital Association, The Healthcare Association of New York State, New York Health Information Management Association, and the New York City Department of Health and Mental Hygiene.

1. Comment: The Department should reconsider the requirement that an annual notarized statement, attesting to the accuracy of the submitted SPARCS data, is required from the health care facility's Chief Executive Officer.

Response: The intent of the proposed requirement was to involve management in the SPARCS submission process. Many times, management's initial knowledge regarding problems with data submission has been a warning letter or Statement of Deficiencies (SOD) from the Department. The Department has decided that the SPARCS program can address this issue administratively by including management earlier in the notification process instead of by imposing a new requirement in regulation. In the final rule, this new requirement has been eliminated.

2. Comment: The regulation should make clear that hospitals may update and resubmit SPARCS data for completeness and accuracy without submitting a revised patient bill to the payer.

Response: A facility has always been allowed to update SPARCS data without submitting a revised bill to the payer. However, all SPARCS data must be supported by documentation in the patient's medical and billing records.

3. Comment: The proposed regulation does not include any explicit HIPAA protection for hospitals.

Response: Submission of SPARCS data is required by State law and is therefore allowed under HIPAA. See 45 CFR § 164.512(a). The SPARCS current input data format, ANSI X12-837, is a HIPAA-compliant data set. The use/disclosure of SPARCS data maintained by the Department is governed by State law, not HIPAA.

4. Comment: The SPARCS statute, Section 2816 of the Public Health

Law, requires that the data elements to be collected be specified in regulation.

Response: Under PHL § 2816(6), the Department is required to precisely identify and publish data elements but not to specify them in regulation. The current set of data elements included in the required SPARCS data submission has allowed the Department to track, respond to, and help prevent health related emergencies and events. These elements continually evolve based on the needs of the residents of New York State, and inclusion of data elements in regulation may prove particularly cumbersome in the future as elements evolve and change. Data elements will continue to be clearly posted on the Department's website at the following link: http://www.health.ny.gov/statistics/sparcs/sysdoc/elements__837/index.htm

5. Comment: The proposed rule requires notarizing of both the Organizational and Individual Data Use Agreements.

Response: In the final rule, the requirement to notarize data use agreements has been eliminated.

6. Comment: The regulation should address the data request review process. Concerns were noted regarding possible unintended consequences of the absence of a second level review process that is currently provided by the Data Protection and Review Board (DPRB).

Response: This regulatory amendment will create a more administratively efficient process that will both facilitate timely review of applications and at the same time ensure input and guidance of external stakeholders who have proven valuable to the review process. The revised process will include an initial review of the request to ensure that it meets certain requirements. Once satisfied that it meets these requirements, a more detailed review will be conducted under the leadership of Department staff inclusive of individuals (including external experts) who are knowledgeable, experienced and familiar with SPARCS data, research, and data analytics. Prior to any data being released, the recommendation of the reviewers will be ratified by the Commissioner.

In the final rule, the Department's process for reviewing requests for identifiable SPARCS data was clarified by adding the following language (in italics): "The SPARCS Administrator shall review and make recommendations. . . on requests for. . . data containing identifying data elements to a data release committee established by the Commissioner. The data release committee shall have at least three members, including at least one member not otherwise affiliated with NYSDOH. The members of the data release committee shall be posted on the NYSDOH website. Requests will be granted only upon formal, written approval for access by. . . a majority of the members of the data release committee. . . ."

7. Comment: The current proposal gives unfettered discretion to the Department and the Commissioner.

Response: As noted in the response to comment 6 above, in addition to including at least one external reviewer on the data release committee, the review process will take the same precautions regarding sensitive data that the DPRB now takes. In addition to the IRB approval required by each researcher, the new process will require that the request only be considered for approval if the following criteria are met:

(i) the purpose of the request is consistent with the purposes for which SPARCS and PRI data may be used;

(ii) the applicant is qualified to undertake the project; and

(iii) The applicant requires such identifying data elements for the intended project and is able to ensure that patient privacy will be protected.

The Commissioner shall retain the power to make the final determinations regarding release of SPARCS data.

8. Comment: Paragraph (8) of subdivision (d) of section 400.18 is unclear and should be reworded.

Response: In the final rule, the language was changed to "The SPARCS program shall publish and make publicly available the name of the project director, the organization, and the title of approved projects."

9. Comment: PHL § 2816 requires that the Department consult with other agencies, providers, third-party payers and patient advocates when making policy decisions regarding SPARCS.

Response: These stakeholders were consulted prior to the publication of the notice of proposed rulemaking.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether Hamilton Should be Granted Rehearing on the Limited Issue of Commercial Customers' Rates

I.D. No. PSC-23-14-00005-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 the Village of Hamilton Municipal Utilities Commission's request for rehearing on the issue of commercial customers' rates due to both a mistake in fact and new circumstances.

Statutory authority: Public Service Law, section 22

Subject: Whether Hamilton should be granted rehearing on the limited issue of commercial customers' rates.

Purpose: To decide whether to approve Hamilton's request for hearing on the limited issue of commercial customers' rates.

Substance of proposed rule: The Commission is considering whether to grant the request made by the Village of Hamilton Municipal Utilities Commission (Hamilton) for a rehearing on the limited issue of commercial customer rates due to both a mistake in fact and new circumstances. The communications and commitments from prospective commercial customers since the date of the original petition on December 2013 were not conveyed to Staff, and as a result, there was a mistake in material fact the infected the Commission's order. Hamilton requests a rehearing to correct this mistake and adopt the rates originally proposed by Hamilton for commercial customers.

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-0584SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petitioner Requests an Order Authorizing Maintenance Resource Support Under the Renewable Portfolio Standard Program

I.D. No. PSC-23-14-00006-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 a petition filed by ReEnergy Lyonsdale LLC requesting maintenance resources for 22 MW biomass electric generating facility located in Lyonsdale, New York.

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

Subject: Petitioner requests an order authorizing maintenance resource support under the Renewable Portfolio Standard Program.

Purpose: To enable continued operation of a 22 MW biomass fueled electric generating facility in Lyonsdale, New York.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, the proposals set forth in a petition dated April 17, 2014, filed by ReEnergy Lyonsdale, LLC. The petition seeks an order authorizing maintenance resource support under the

Renewable Portfolio Standard (RPS) program as necessary to allow the continued operation of a 22 MW biomass-fueled electric generating facility located in Lyonsdale, New York, for a period of three-years. ReEnergy further requests that the Commission allow Lyonsdale the option to accept or reject any maintenance tier award offered by the Commission so that Lyonsdale may alternatively choose to participate in NYSEERDA's next Main Tier solicitation. Additionally, ReEnergy respectfully requests that the Commission act expeditiously in its review of ReEnergy's request for a maintenance tier award so that an order may be issued in sufficient time to allow ReEnergy to implement a plan to keep the Facility in operation past 2014. Petitioners assert that continued operation of the facility will serve the public interest by providing needed renewable energy, jobs, and local investment in Western New York. Lastly, ReEnergy respectfully requests that the Commission, in its order, authorize ReEnergy to enter into a Main Tier contract with NYSEERDA in excess of 3 years should the Commission remove or modify the 10-year RPS contract term cap while ReEnergy's current request is pending.

The Commission is considering the explicit relief requested within the petition and other related issues raised in the petition. The Commission could provide such enhanced RPS benefits either by restructuring an existing seven-year RPS Main Tier Agreement, or by establishing a new program of supplemental benefits for biomass facilities similar to the Maintenance Tier that the Commission established for renewable energy resources already in existence when the RPS program was first adopted.

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

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

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

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

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

(03-E-0188SP49)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Establish a Temporary Surcharge to Recover Costs

I.D. No. PSC-23-14-00007-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 whether to approve or reject in whole or in part, a petition filed by Greentree Water Company requesting a temporary surcharge to recover costs incurred as a result of wells' equipment replacement and repairs.

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

Subject: To establish a temporary surcharge to recover costs.

Purpose: For approval to recover expenses incurred as a result of having to replace the main well pump due to failure.

Substance of proposed rule: On May 5, 2014, Greentree Water Company (Greentree or the Company) filed a petition requesting the Public Service Commission's approval to surcharge its customers \$37.01 per customer per quarter for three quarters to recover costs in the amount of \$9,663.25 incurred due to the replacement of the main well pump and repairs done to the sump pump of the secondary well pit. Proposed recovery includes interest from January 1, 2014 of 8%.

Greentree provides water service to approximately 94 customers in the Town of Thompson, Sullivan County. Public fire protection service is not provided. The Commission may approve or reject, in whole or in part, or modify the Company's request.

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-W-0155SP1)

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

Petition for Submetering of Electricity

I.D. No. PSC-23-14-00008-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 Zbigniew Solarz to submeter electricity at 715 41st Street, Brooklyn, 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 Zbigniew Solarz to submeter electricity at 715 41st Street, Brooklyn, 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 Zbigniew Solarz to submeter electricity at 715 41st Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc. 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-0152SP1)

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

Consideration of a Joint Proposal

I.D. No. PSC-23-14-00009-P

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

Proposed Action: The Commission is considering a joint proposal between National Grid and Staff of the Department of Public Service resolving all issues related to an investigation into National Grid's cost allocations, policies and procedures.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Consideration of a joint proposal.

Purpose: Consideration of a joint proposal resolving all issues related to an investigation into National Grid's cost allocations.

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, a May 23, 2014 Joint Proposal entered into between National Grid USA, Niagara Mohawk Power Corporation, The Brooklyn Union Gas Company, KeySpan Gas East Corporation (collectively "National Grid") and Staff of

the Department of Public Service purporting to resolve all issues related to Case 10-M-0451, the Commission's investigation into National Grid's Affiliate Cost Allocations, Policies and Procedures.

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

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

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

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

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

(13-M-0026SP1)

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

Whether to Permit the Use of the GE Dresser Series B3-HPC 11M-1480 Rotary Gas Met for Use in Industrial Gas Meter Applications

I.D. No. PSC-23-14-00010-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 Central Hudson Gas and Electric Corporation for the approval to use the GE Dresser Series B3-HPC 11M-1480 rotary gas meter.

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

Subject: Whether to permit the use of the GE Dresser Series B3-HPC 11M-1480 rotary gas met for use in industrial gas meter applications.

Purpose: To permit gas utilities in New York State to use the GE Dresser Series B3-HPC 11M-1480 rotary gas meter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Central Hudson Gas and Electric Corporation, to use the GE Dresser Series B3-HPC 11M-1480 rotary gas meter in industrial natural gas meter applications.

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

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

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

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

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

(14-G-0161SP1)

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

Whether to Grant Deny or Modify in Whole or in Part the Tariff Filing of National Grid to Revise Rule 46 of its Electric Tariff

I.D. No. PSC-23-14-00011-P

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

Proposed Action: The Commission is considering whether to grant deny or modify in whole or in part the tariff filing of Niagara Mohawk Power Corporation d/b/a National Grid to revise Rule 46 of its electric tariff to allow it flexibility to manage commodity volatility.

Statutory authority: Public Service Law, sections 65(1), 66(12)(a), (b) and (e)

Subject: Whether to grant deny or modify in whole or in part the tariff filing of National Grid to revise Rule 46 of its electric tariff.

Purpose: Whether to grant deny or modify in whole or in part the tariff filing of National Grid to revise Rule 46 of its electric tariff.

Substance of proposed rule: The Commission is considering whether to grant, deny or modify, in whole or in part, the tariff amendments filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid or the Company) to make revisions to Rule 46 - Supply Service Charges, contained in P.S.C. No. 220 – Electricity. The amendments National Grid proposes would provide it with a measure of flexibility to manage significant volatility resulting from the reconciliation of electric commodity costs for residential and small commercial customers (mass market customers). National Grid proposed three tariff modifications to allow for the flexibility it seeks: 1) a revision to the New Hedge Adjustment (NHA), which charges or credits customers the costs or benefits of the Company's hedging strategy on a monthly basis. According to the Company, the revision would enable National Grid to allocate the costs or benefits of an enhanced supply portfolio hedging strategy by New York Independent System Operator (NYISO) Zone. A zonal NHA rate would align the hedges with the specific zones and provide mass market customers with additional protection against supply cost volatility; 2) revision to the Mass Market Adjustment component of the Electricity Supply Reconciliation mechanism (ESRM) to enable the Company to reconcile the MMA by NYISO zone to reflect the actual zonal market prices to ensure customers receive the credits or pay the charges incurred in their zone; and, 3) a revision to allow the Company to have more flexibility in the timing of the reconciliation of revenues and expenses for mass market customers, which the Company claims would enable it to spread out the monthly supply cost reconciliations over two or more months. The proposed filing has an effective date of August 28, 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) 474-6530, 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-0180SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Elster Instromet Q.Sonic Plus Ultrasonic Meter for Use in Industrial Gas Meter Applications

I.D. No. PSC-23-14-00012-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 Central Hudson Gas and Electric Corporation for the approval to use the Elster Instromet Q.Sonic Plus Multi-Path Ultrasonic gas meter.

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

Subject: Whether to permit the use of the Elster Instromet Q.Sonic Plus Ultrasonic meter for use in industrial gas meter applications.

Purpose: To permit gas utilities in New York State to use the Elster Instromet Q.Sonic Plus Ultrasonic gas meter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Central Hudson Gas and Electric Corporation, to use the Elster Instromet

Q Sonic Plus Multi-Path Ultrasonic gas meter in industrial natural gas meter applications.

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

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

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

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

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

(14-G-0160SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Automated Meter Reading (AMR)

I.D. No. PSC-23-14-00013-P

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

Proposed Action: The Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make changes to its rates, charges, rules and regulations contained in PSC No. 15 — Electricity.

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

Subject: Automated Meter Reading (AMR).

Purpose: To establish fees for residential customers who choose to opt out of using AMR meters.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation (the Company) to its electric schedule P.S.C. No. 15 — Electricity. The Company proposes to establish fees to allow residential electric customers to opt out of using Automated Meter Reading (AMR) meters by electing to have the Company (1) install/maintain a non-AMR meter (one that does not use a transmitter to remotely read the meter) at their premises and (2) manually read their meters through in-person, bi-monthly meter reads. The proposed filing has an effective date of October 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) 474-6530, 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-M-0196SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of the Negative Revenue Adjustment Associated with KEDLI's 2013 Customer Satisfaction Performance Metric

I.D. No. PSC-23-14-00014-P

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

Proposed Action: The Commission is considering a petition by Keyspan Gas East Corporation d/b/a National Grid (“KEDLI”) requesting a waiver of the negative revenue adjustment associated with its customer satisfaction service metric for calendar year 2013.

(14-M-0196SP2)

Statutory authority: Public Service Law, sections 65 and 66

Subject: Waiver of the negative revenue adjustment associated with KEDLI’s 2013 Customer Satisfaction Performance Metric.

Purpose: Consideration of KEDLI’s waiver request pertaining to its 2013 performance under its Customer Satisfaction Metric.

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, a May 22, 2014 petition of Keyspan Gas East Corporation d/b/a National Grid (“KEDLI”) requesting a waiver of the negative revenue adjustment of \$4,445,000 associated with its customer satisfaction service performance metric for calendar year 2013.

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-G-0193SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Automated Meter Reading (AMR)

I.D. No. PSC-23-14-00015-P

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

Proposed Action: The Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make changes to its rates, charges, rules and regulations contained in PSC No. 12 — Gas.

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

Subject: Automated Meter Reading (AMR).

Purpose: To establish fees for residential customers who choose to opt out of using AMR meters.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation (the Company) to its gas tariff schedule P.S.C. No. 12 — Gas. The Company proposes to establish fees to allow residential gas customers to opt out of using Automated Meter Reading (AMR) meters by electing to have the Company (1) install/maintain a non-AMR meter (one that does not use a transmitter to remotely read the meter) at their premises and (2) manually read their meters through in-person, bi-monthly meter reads. The proposed filing has an effective date of October 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) 474-6530, 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.