

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 Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-47-14-00002-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Taxation and Finance, by decreasing the number of positions of Investigator from 11 to 10, in the Executive Department under the subheading “Division of Alcoholic Beverage Control,” by decreasing the number of positions of Special Assistant from 3 to 2; and, in the Executive Department under the subheading “Office of Information Technology Services,” by increasing the number of positions of Special Assistant from 10 to 11 and in the Executive Department under the subheading “Office of the Governor, Office of the State Inspector General,” by adding thereto the position of Investigator.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS

Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-47-14-00003-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Agriculture and Markets, by deleting therefrom the position of Supervisor, Kosher Law Enforcement and by increasing the number of positions of Special Assistant from 12 to 13.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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Rural Area Flexibility Analysis

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Job Impact Statement

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PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-47-14-00004-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Criminal Justice Services," by adding thereto the position of Director Juvenile Justice Policy.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

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Job Impact Statement

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PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-47-14-00005-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Civil Service, by adding thereto the position of Assistant Commissioner.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

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PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-47-14-00006-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a subheading and positions from the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department, by deleting therefrom the subheading "Office of Urban Revitalization" and the positions of Administrative Director, Associate Research Analyst (Urban Affairs) (3) and Urban Affairs Specialist (2).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

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

Jurisdictional Classification

I.D. No. CVS-47-14-00007-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Mental Health Program Manager 1 from 4 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

**Department of Environmental
Conservation**

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

Management of Coastal Sharks

I.D. No. ENV-47-14-00001-P

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

Proposed Action: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303 and 13-0338

Subject: The management of coastal sharks.

Purpose: Make State regulations consistent with Federal rules and maintain compliance with the ASMFC Interstate FMP for Coastal Sharks.

Text of proposed rule: Existing 6 NYCRR paragraph 40.7(c)(2) is repealed.

New paragraph 40.7(c)(2) is adopted to read as follows:

(2)(i) *There is no minimum size limit for the following shark species: Atlantic sharpnose, blacknose, bonnethead, finetooth, smoothhound (smooth dogfish), and spiny dogfish.*

(ii) *The minimum size limit for the following shark species is 54 inches: blacktip, blue, bull, lemon, nurse, oceanic whitetip, porbeagle, shortfin mako, spinner, thresher, and tiger.*

(iii) *The minimum size limit for the following shark species is 78 inches: great hammerhead, scalloped hammerhead, and smooth hammerhead.*

Existing paragraphs 40.7(d)(4)(iii) through (vi) are repealed.

New paragraphs 40.7(d)(4)(iii) through (viii) are adopted to read as follows:

(iii) *Smoothhound species: smooth dogfish ('Mustelus canis');*

(iv) *Non-Blacknose Small Coastal species: Atlantic sharpnose ('Rhizoprionodon terraenovae'); bonnethead ('Sphyrna tiburo'); finetooth ('Carcharhinus isodon');*

(v) *Blacknose: blacknose shark ('Carcharhinus acronotus');*

(vi) *Aggregated Large Coastal species: blacktip ('Carcharhinus limbatus'); bull ('Carcharhinus leucas'); lemon ('Negaprion brevirostris'); nurse ('Ginglymostoma cirratum'); silky ('Carcharhinus falciformis'); spinner ('Carcharhinus brevippinna'); tiger ('Galeocerdo cuvier');*

(vii) *Hammerhead species: great hammerhead ('Sphyrna mokarran'); scalloped hammerhead ('Sphyrna lewini'); smooth hammerhead ('Sphyrna zygaena');*

(viii) *Pelagic species: blue ('Prionace glauca'); common thresher ('Alopias vulpinus'); oceanic whitetip ('Carcharhinus longimanus'); porbeagle ('Lamna nasus'); shortfin mako ('Isurus oxyrinchus');*

Existing paragraphs 40.7(d)(7) and (8) are amended to read as follows:

(7) *There is no possession limit for sharks listed in subparagraphs (4)(iii), [(iv) and (v)] (iv), (v), and (viii) of this subdivision.*

(8) *No person shall take possess or land more than [33] 36 sharks, regardless of species, listed in subparagraph (4)(vi) and (4)(vii) of this subdivision, in any 24-hour period.*

Existing paragraph 40.7(d)(12) is amended to read as follows:

(12) *Quotas, trip limits and directed fishery thresholds may be set by the Atlantic States Marine Fisheries Commission Spiny Dogfish [& Coast] and Coastal Sharks Management Board (Sharks Board) for the [smooth dogfish, small coastal, non-sandbar large coastal and pelagic] smoothhound species group, Non-Blacknose Small Coastal, Blacknose, Aggregated Large Coastal, Hammerhead and Pelagic species groups for each commercial fishing year. The department will establish trip limits and directed fishery thresholds within the fishing year consistent with those established by the Sharks Board. Such trip limits and thresholds will be enforceable upon 72 hours notice to license holders of the vessel trip limit allowed.*

Text of proposed rule and any required statements and analyses may be obtained from: Stephen W. Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0435, email: steve.heins@dec.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.

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the Department.

Regulatory Impact Statement

1. **Statutory authority:**

Environmental Conservation Law (ECL) section 13-0105 stipulates that the management of the state's transboundary species, such as sharks, shall be consistent with interstate or state-federal management plans. ECL section 13-0338 authorizes DEC to establish by regulation measures for the management of sharks, including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, recordkeeping requirements, and other shark management measures. Shark regulations adopted by DEC must be consistent with the requirements of applicable fishery management plans adopted by the ASMFC and with applicable provisions of FMPs adopted pursuant to the Federal Fishery Conservation and Management Act.

2. **Legislative objectives:**

It is the objective of the above-cited legislation that DEC manages

marine fisheries in such a way as to protect this natural resource for its intrinsic value to the marine ecosystem and to optimize resource use for commercial and recreational harvesters while remaining compliant with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This rule making is necessary for New York State to remain in compliance with fishery management plans adopted by the Atlantic States Marine Fisheries Commission (ASMFC). All member states of ASMFC and the Mid-Atlantic Fishery Management Council (MAFMC) must comply with the provisions of FMPs and management measures adopted by ASMFC and MAFMC. These FMPs and management measures are designed to promote the long-term sustainability of quota managed marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate any regulations necessary to implement the provisions of the FMPs and remain compliant with the FMPs. New York State must amend 6 NYCRR Section 40.7 to ensure that the State's regulations are consistent with recently changed federal rules and are compliant with the provisions of the ASMFC Interstate Fishery Management Plan for Coastal Sharks. The proposed regulations are designed to provide additional protection and monitoring to hammerhead and blacknose shark species. Failure to adopt these regulations may result in New York State being found non-compliant with the recommendations of the FMP for coastal sharks and subject to the imposition of a moratorium on the harvest of coastal sharks in New York State.

4. Costs:

The proposed rule does not impose any costs to the department, local municipalities, or the regulated public.

5. Local government mandates:

The proposed rule does not impose any mandates on local governments.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

"No action" alternative: Under this alternative New York State would not amend 6 NYCRR Section 40.7 Coastal Sharks. This alternative is not projected to affect shark fishing in New York since none of the hammerhead shark species or the blacknose sharks are targeted in New York waters or landed in significant numbers. This alternative was rejected because of New York State's obligations to comply with the ASMFC FMP for coastal sharks.

The ASMFC Interstate Fishery Management Plan for Coastal Sharks has been amended to provide further protection to hammerhead and blacknose sharks. DEC must amend 6 NYCRR Section 40.7 to be compliant with the provisions of both federal and ASMFC FMPs for coastal sharks.

9. Federal standards:

The amendment to 6 NYCRR 40.7 is in compliance with recently adopted federal regulations and the ASMFC FMP for coastal sharks.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The proposed regulations will take effect upon filing with the Department of State after the 45-day public comment period.

Regulatory Flexibility Analysis

1. Effect of rule:

DEC proposes to adopt regulations that amend the current regulatory management measures for coastal sharks. The proposed regulations will increase the recreational minimum size limit for hammerhead sharks (great hammerhead, scalloped hammerhead and smooth hammerhead) from 54 inches to 78 inches fork length. The proposed rule will also reorganize the commercial species groupings for sharks based on the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan (FMP) for Coastal Sharks. Hammerhead sharks and blacknose sharks will each become a separate species group for quota management purposes. The proposed rule will be consistent with the federal rules for management of coastal sharks.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of regulated parties in order to comply with the changes. There is no ad-

ditional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

The proposed rule will not have a significant impact on New York State commercial fishermen or recreational anglers. The creation of species groups for hammerhead sharks and blacknose sharks allows for closer monitoring of the landings. Should the hammerhead quota (coast-wide) be landed, NMFS would close the entire fishery. However, the hammerhead sharks and blacknose sharks are not targeted by New York State commercial fishermen. State commercial fishermen would not be affected by a closure of the hammerhead fishery. Likewise, hammerhead sharks and blacknose sharks are not usually a target species for recreational anglers in New York. New York anglers usually target blue, shortfin mako and thresher sharks.

The failure to promulgate the proposed rules will result in New York not complying with the management measures adopted by ASMFC. New York may be found non-compliant with the FMP for coastal sharks and subject to sanctions; ASMFC may request the Secretary of Commerce to implement a moratorium for fishing for sharks in the State of New York. Protection of the state's shark resource is essential to the long-term benefit of commercial fishers and recreational anglers. Any short-term losses in harvest and angler participation as a result of the promulgation of the proposed rules will be offset by the maintenance or restoration of fishery stocks and an increase in yield from well-managed resources. These regulations are designed to protect coastal sharks from overfishing and achieve long-term sustainability of the fisheries for future use. Failure to comply with the FMP and take required actions to protect the State's marine resources could cause a collapse of the stock and have a severe adverse impact on the commercial and recreational fishing industries dependent on that species, as well as on the supporting industries for those fisheries. Any positive effect of adopting proper management measures may not be apparent for several years, not until the stocks recover from depletion and becomes sustainable.

7. Small business and local government participation:

Provisions of the rule making will be presented to the Marine Resources Advisory Council by DEC at the next meeting. Members of the local fishing communities will have the opportunity to discuss the ramifications of the rule making at that meeting. There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

9. Initial review of rule:

DEC will conduct an initial review of the rule within three years as required by SAPA section 207.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The summer flounder, scup and black sea bass fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

DEC is proposing to amend the regulations that manage coastal sharks within New York State marine waters. The proposed rule will be consistent with existing federal rules and provisions of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Coastal Sharks. The proposed rule will not have a significant impact on New York State commercial fishermen or recreational anglers. The creation of species groups for hammerhead sharks and blacknose sharks allows for closer monitoring of the landings and management of the quota for these species. However, the hammerhead sharks and blacknose sharks are not targeted by New York State commercial fishermen or recreational anglers. Should the hammerhead or blacknose shark quota (coast-wide) be landed, NMFS would close the entire fishery. Such a closure would not greatly affect State commercial fishermen or recreational anglers since those sharks are not landed in large numbers in New York.

2. Categories and numbers affected:

DEC proposes to amend regulations that implement management measures for hammerhead sharks and blacknose sharks, species not targeted by New York State commercial fishermen. In 2013 there were

1,008 state food fishing license holders and 475 party and charter boat permit holders in New York. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. The number of recreational fishers in New York has been estimated by the National Marine Fisheries Service to be approximately 600,000 in 2012. However, this Job Impact Statement does not include them in this analysis, since fishing is recreational for them and not related to employment.

3. Regions of adverse impact:

The regions most likely to receive any adverse impact are within the marine and coastal district of the State of New York. This area included all the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, including Long Island Sound. Although a portion of the Hudson River is within the marine and coastal district, the Hudson River is not a usual habitat of coastal sharks.

4. Minimizing adverse impact:

This proposed rule will not have an adverse impact on New York State commercial fishermen or recreational anglers since the shark species affected are not targeted by state fishermen or anglers. However, the failure to promulgate the proposed rules will result in New York not complying with the management measures adopted by ASMFC. New York may be found non-compliant with the FMP for coastal sharks and subject to sanctions; ASMFC may request the Secretary of Commerce to implement a moratorium for fishing for coastal sharks species in the State of New York. Protection of the state's marine resource is essential to the long-term benefit of commercial fishers and recreational anglers. Any short-term losses in harvest and angler participation will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. These regulations are designed to protect the coastal shark stocks from overfishing, allow the stock to rebuild and achieve long-term sustainability of the fisheries for future use. Failure to comply with FMPs and take required actions to protect the State's marine resources might cause the collapse of a local stock and have a severe adverse impact on the commercial and recreational fishing industries dependent on that species, as well as on the supporting industries for those fisheries. Any positive effect of adopting proper management measures may not be apparent for several years, not until the stocks recover from depletion and becomes sustainable.

5. Self-employment opportunities:

Commercial fishermen, party and charter boat businesses, bait and tackle shops, and marinas are, for the most part, small businesses, owned and usually operated by the owner. Changes in regulations managing fishery resources may have direct effect on the business opportunities and income of these small businesses.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA section 207.

Department of Financial Services

EMERGENCY RULE MAKING

Unfair Claims Settlement Practices and Claim Cost Control Measures

I.D. No. DFS-47-14-00010-E

Filing No. 933

Filing Date: 2014-11-07

Effective Date: 2014-11-07

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

Action taken: Amendment of Part 216 (Regulation 64) of Title 11 NYCRR.

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

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

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

ment practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe to settle claims properly.

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

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

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

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

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

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

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

Text of emergency rule: 216.13 Mediation.

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

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

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

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

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

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

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

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

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

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

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

(e)(1) The mediation shall be conducted in accordance with proce-

dures established by the designated organization and approved by the superintendent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and

will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 4, 2015.

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

Regulatory Impact Statement

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

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

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

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

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

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

Participation in the mediation program by insureds is voluntary.

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

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

5. **Rural area participation:** Public and private interests in rural areas have had a continual opportunity to participate in the rule making process since the first publication of the emergency measure in the State Register on March 13, 2013, which was published again in the State Register on August 27, 2014. The emergency measure also has been posted on the Department's website continually since March 13, 2013.

Job Impact Statement

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

Department of Health

EMERGENCY RULE MAKING

Opioid Overdose Programs

I.D. No. HLT-47-14-00013-E

Filing No. 937

Filing Date: 2014-11-10

Effective Date: 2014-11-10

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

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

Statutory authority: Public Health Law, section 3309

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

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

In New York State substantial mortality is associated with opioids. In 2012, there were 875 deaths where the toxicology reports indicated opioid analgesics. In addition, 478 overdose deaths occurred that year associated with heroin and 150 deaths for which the toxicology report indicated an unspecified opioid. The heroin-related deaths for 2012 represent an almost-threefold increase from two years earlier. Although there are not yet consolidated reports for more recent years, there is reason to believe,

based on information shared by local jurisdictions as well as from legislative hearings, that this trend has not only continued, but has grown at an alarming rate.

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

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

Subject: Opioid Overdose Programs.

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 7, 2015.

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.ny.gov

Regulatory Impact Statement

Statutory Authority:

Chapter 413 of the Laws of 2005, effective April 1, 2006, added Section 3309 of the Public Health Law to provide for opioid overdose prevention programs in New York State (NYS). Pursuant to PHL Section 3309(1), as amended by Chapters 34 and 42 of the Laws of 2014, the Commissioner of Health is authorized to establish standards for approval of opioid overdose prevention programs.

Legislative Objectives:

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

Needs and Benefits:

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

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

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

OASAS estimates that there are approximately 200,000 heroin users in New York State. In 2009, there were 14,010 treatment admissions with a primary diagnosis pertaining to a prescription opioid pain reliever and 27,496 for any diagnosis (primary, secondary or tertiary) pertaining to a prescription opioid pain reliever. Most overdoses are not instantaneous and the majority of them are witnessed by others.

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

Opioid overdose prevention programs, including those regulated by the current regulation, have proven effective in preventing unnecessary deaths. As of June 30, 2014, over 140 programs have registered as Overdose Prevention Providers and over 75,000 naloxone kits have been distributed by NYSDOH. As of that same date, there were 918 reports of overdose

reversals with the naloxone kits. Seventy-one percent of the people who received naloxone because of a drug overdose were between the ages of 18-45; the vast majority had injected heroin; and frequently opioids were used in combination with alcohol and other drugs. The largest number of reversals have been reported from New York (Manhattan) (208, 22.7%), Erie (175, 19.1%) and Bronx (157, 17.1%) counties.

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

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

Costs:

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

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

Each individual or organization that chooses to establish an opioid overdose prevention program must submit an initial application to the Department. Information on approved programs is then used to develop a listing of opioid overdose prevention programs, which is shared with the public. Applications for approval to establish opioid overdose prevention programs will continue to be accepted on an ongoing basis, with review and renewal happening at two-year intervals.

Regulatory Flexibility Analysis

Effect of Rule:

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

Compliance Requirements:

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

Offering of opioid overdose prevention programs remains entirely voluntary.

Professional Services:

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

Small businesses (including small business hospitals, clinics, health care practitioners, drug treatment programs, individual practitioners, and community-based organizations) as well as local health departments had an opportunity to review and comment on the original regulations as well as on subsequent proposed changes. A similar opportunity is being provided with respect to the changes in the regulations now being

proposed, particularly with non-patient specific prescriptions for naloxone and shared access to—and use of—naloxone by trained overdose responders. The Department has already begun to have conversations with public safety agencies and some registered programs regarding these issues. There will also be discussions with pharmacies and state agencies that are now eligible to maintain registered programs.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

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

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

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

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

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

Costs:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

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

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

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

Job Impact Statement

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

Proposed Action: Amendment of Part 578 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

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

Purpose: Elimination of trend factor effective July 1, 2014.

Text of proposed rule: Paragraph (4) of subdivision (a) of Section 578.8 of Title 14 NYCRR is amended to read as follows:

(4) The allowable costs, as set forth in paragraph (1) of this subdivision, that meet the requirements stated in paragraphs (2) and (3) of this subdivision, shall be trended by the applicable Medicare inflation factor for hospitals and units excluded from the prospective payment system except for the rate periods effective July 1, 1996 through June 30, 1997, and July 1, 2009 through June 30, 2010, where the inflation factor used to trend costs will be limited to the inflation factor for the first year of the two-year period. No trend shall be applied to allowable costs for the rate period effective July 1, 2013 through June 30, 2014, and July 1, 2014 through June 30, 2015.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 43.02 of the Mental Hygiene Law provides that the Commissioner has the power to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including residential treatment facilities for children and youth licensed by the Office of Mental Health.

2. Legislative objectives: Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs. The amendments to Part 578 are needed to reduce the growth rate of Medicaid reimbursement associated with residential treatment facilities for children and youth regulated by the Office of Mental Health (OMH) thereby ensuring consistency with the enacted 2014-2015 state budget.

3. Needs and benefits: The amendments remove the trend factor from the 2014-15 Medicaid rate calculation for residential treatment facilities (RTFs) for children and youth, which are identified as a subclass of hospitals under Section 31.26 of the Mental Hygiene Law. This is an Administrative Action consistent with the 2014-2015 enacted State Budget, and reflects the serious fiscal condition of the State. The use of an updated cost report period that recognizes more recent expenditure patterns by the RTFs will serve to mitigate the impact of the elimination of the trend factor on the programs. As a result, the rate of growth in Medicaid expenditures is slowed, yet the RTF's quality and availability of services will be maintained.

4. Costs:

(a) Cost to State government: It is estimated that this action will result in an annual reduction in Medicaid growth of \$1,595,210 State share of Medicaid (\$3,191,420 gross Medicaid).

(b) Cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) Cost to regulated parties: This regulatory amendment will not result in any additional cost to regulated parties, but will reduce the rate of growth in Medicaid payments that the RTF providers receive.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: As noted above, this amendment is consistent with the 2014-2015 enacted State Budget and the budgetary constraints included therein. OMH has determined that the elimination of the trend factor for RTFs would not affect the ability of those programs to continue to function and serve the children and youth who are receiving services there, and is mitigated by using an updated cost report period, thereby recognizing more recent expenditure patterns by the programs. The only alternative to this rule making would have been to make budgetary cuts to another program which would not have been as sustainable as the residential treatment facilities; therefore, that alternative was not considered.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. OMH-47-14-00011-P

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

9. Federal standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The regulatory amendments would become effective immediately upon adoption.

Regulatory Flexibility Analysis

The proposed rule amending 14 NYCRR Part 578 removes the trend factor from the 2014-2015 Medicaid rate calculation for residential treatment facilities for children and youth, and as a result, slows the rate of growth in Medicaid payments while maintaining the program’s quality and availability of services. The amendments are the result of an Administrative Action consistent with the 2014-2015 enacted State Budget. There will be no adverse economic impact on small business or local governments; therefore a Regulatory Flexibility Analysis for Small Business and Local Governments has not been submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the amendments will not impose any adverse economic impact on rural areas. The proposed rule removes the trend factor from the 2014-2015 Medicaid rate calculation for residential treatment facilities for children and youth, and as a result, slows the rate of growth in Medicaid payments while maintaining the program’s quality and availability of services. This is an Administrative Action consistent with the 2014-2015 enacted State budget.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the purpose of the rule is to remove the trend factor from the 2014-2015 Medicaid rate calculation for residential treatment facilities for children and youth regulated by the Office of Mental Health. This is an Administrative Action consistent with the 2014-2015 enacted State budget. There will be no adverse impact on jobs and employment opportunities.

Public Service Commission

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

Consideration of the National Grid Implementation Plan and Audit Recommendations

I.D. No. PSC-47-14-00012-P

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

Proposed Action: The Commission is considering whether to approve, modify or reject, in whole or in part, the Implementation Plan submitted by the National Grid gas companies under Public Service Law, section 66(19) and whether to order implementation of audit recommendations.

Statutory authority: Public Service Law, section 66(19)

Subject: Consideration of the National Grid Implementation Plan and audit recommendations.

Purpose: To approve, modify or reject, in whole or in part, National Grid’s Implementation Plan.

Substance of proposed rule: On November 3, 2014, National Grid filed its Management Audit Implementation Plan (Implementation Plan) in Case 13-G-0009. National Grid’s Implementation Plan addresses the 31 recommendations contained in the Final Audit Report prepared by NorthStar Consulting Group as a result of its comprehensive management and operations audit of National Grid’s gas business in New York State.

The Commission is considering whether to approve, modify or reject, in whole or in part, the Implementation Plan submitted by National Grid pursuant to Public Service Law § 66(19).

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

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

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

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

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

(13-G-0009-SP1)

State University of New York

**EMERGENCY
RULE MAKING**

Tuition and Fees at State-Operated Units of State University

I.D. No. SUN-47-14-00008-E

Filing No. 932

Filing Date: 2014-11-07

Effective Date: 2014-11-07

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

Action taken: Amendment of section 302.1(a) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition rates are intended to be effective for the Fall 2014 semester. In order to comply with Chapter 328 of the Laws of 2014, notice of the new rates needs to occur as soon as possible.

Subject: Tuition and fees at State-operated units of State University.

Purpose: To amend the in-state tuition rates where so required under State or Federal law.

Text of emergency rule: Amendment to section 302.1(a) of Title 8 NYCRR.

(6) State or Federal Law Requiring In-State Rates. Notwithstanding a student’s domiciliary status, a student will be considered a resident eligible for in-state tuition rates where so required under state or federal law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 4, 2015.

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

Regulatory Impact Statement

This is a technical amendment to implement the provisions of Chapter 328 of the Laws of 2014-2015, requiring SUNY to provide in-state tuition rates for veterans, and to comply with other state and federal laws mandating in-state tuition rates for individuals based upon criteria other than NYS residency.

Regulatory Flexibility Analysis

This is a technical amendment to implement the provisions of Chapter 328 of the Laws of 2014 and other laws mandating in-state tuition benefits for non-NYS residents. The amendment provides for in-state tuition rates for certain veterans. It will have no impact on small businesses and local governments.

Rural Area Flexibility Analysis

This is a technical amendment to implement the provisions of Chapter 328 of the Laws of 2014 and other laws mandating in-state tuition benefits for non-NYS residents. The amendment provides for the provision of in-state tuition rates for courses taken by certain enrolled veterans. This rule making will have no impact on rural areas or the recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs,

employment opportunities, or self-employment. This regulation governs in-state tuition rates for State University of New York and will not have any adverse impact on the number of jobs or employment.

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

Tuition and Fees at State-Operated Units of State University

I.D. No. SUN-47-14-00009-P

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

Proposed Action: This is a consensus rule making to amend section 302.1(a) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: Tuition and fees at State-operated units of State University.

Purpose: To amend the in-state tuition rates where so required under State or Federal law.

Text of proposed rule: Amendment to section 302.1(a) of Title 8 NYCRR.

(6) State or Federal Law Requiring In-State Rates. Notwithstanding a student's domiciliary status, a student will be considered a resident eligible for in-state tuition rates where so required under state or federal law.

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

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

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

Consensus Rule Making Determination

The State University of New York has determined that no person is likely to object to this rule as written because it amends SUNY regulations to comply with Chapter 328 of the Laws of 2014.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs in-state tuition rates for State University of New York and will not have any adverse impact on the number of jobs or employment.

Workers' Compensation Board

NOTICE OF ADOPTION

Medical Treatment Guidelines

I.D. No. WCB-22-14-00009-A

Filing No. 935

Filing Date: 2014-11-10

Effective Date: 2014-12-15

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

Action taken: Amendment of section 324.2 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 141 and 13

Subject: Medical Treatment Guidelines.

Purpose: Add Non-Acute Medical Treatment Guidelines.

Text of final rule: Section 324.2 of Part 324 of 12 NYCRR is amended to read as follows:

§ 324.2 Medical treatment guidelines

(a) Medical Treatment Guidelines. Regardless of the date of accident or date of disablement, treatment of on the job injuries, illnesses, or occupational diseases to a worker's lumbar, thoracic, or cervical spine, shoulder or knee, or for carpal tunnel syndrome, or non-acute pain shall be consistent with the Medical Treatment Guidelines set forth in paragraphs (1) through (5)(6) of this subdivision. The operative Medical Treatment Guidelines shall be the Medical Treatment Guidelines in place on the date

on which medical services are rendered. All Treating Medical Providers shall treat all existing and new workers' compensation injuries, illnesses, or occupational diseases, except as provided in section 324.3 of this Part, in accordance with the following:

(1) for the lumbar and thoracic spine, the New York Mid and Low Back Injury Medical Treatment Guidelines, [Second] *Third Edition*, [January 14, 2013, effective March 1, 2013] *September 15, 2014, effective November 1, 2014*, which is herein incorporated by reference;

(2) for the cervical spine, the New York Neck Injury Medical Treatment Guidelines, [Second] *Third Edition*, [January 14, 2013, effective March 1, 2013] *September 15, 2014, effective November 1, 2014*, which is herein incorporated by reference;

(3) for the knee, with the New York Knee Injury Medical Treatment Guidelines, [Second] *Third Edition*, [January 14, 2013, effective March 1, 2013] *September 15, 2014, effective November 1, 2014*, which is herein incorporated by reference;

(4) for the shoulder, the New York Shoulder Injury Medical Treatment Guidelines, [Second] *Third Edition*, [January 14, 2013, effective March 1, 2013] *September 15, 2014, effective November 1, 2014*, which is herein incorporated by reference; [and,]

(5) for carpal tunnel syndrome, the New York Carpal Tunnel Syndrome Medical Treatment Guidelines, [First Edition, January 14, 2013, effective March 1, 2013] *Second Edition, September 15, 2014, effective November 1, 2014*, which is incorporated herein by reference[.]; and,

(6) for non-acute pain, the New York Non-Acute Pain Medical Treatment Guidelines, *First Edition, September 15, 2014, effective November 1, 2014, which is incorporated herein by reference.*

(b) Obtaining the medical treatment guidelines. The New York Mid and Low Back Injury Medical Treatment Guidelines, New York Neck Injury Medical Treatment Guidelines, New York Knee Injury Medical Treatment Guidelines, New York Shoulder Injury Medical Treatment Guidelines, [and] New York Carpal Tunnel Syndrome Medical Treatment Guidelines, and *New York Non-Acute Pain Medical Treatment Guidelines* incorporated by reference herein may be examined at the office of the Department of State, 99 Washington Avenue, Albany, New York, 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the Board. Copies may be downloaded from the Board's website or obtained from the Board by submitting a request in writing, with the appropriate fee, identifying the specific guideline requested and the choice of format to Publications, New York State Workers' Compensation Board, 328 State Street, Schenectady, New York 12305-2318. Information about the Medical Treatment Guidelines can be requested by email at GENERAL_INFORMATION@wcb.ny.gov, or by telephone at 1-800-781-2362. The Medical Treatment Guidelines are available on paper or compact disc. A fee of ten dollars will be charged for each guideline requested in paper format, and a fee of five dollars will be charged for a compact disc containing all guidelines requested. Payment of the fee shall be made by check or money order payable to "Chair WCB."

(c) Limitations. The Medical Treatment Guidelines in subdivision (a) of this section and this Part are not intended to, and were not prepared with the expectation of, establishing a standard for determining professional liability.

(d) Pre-authorized procedures list. (1) All medical care consistent with the Medical Treatment Guidelines costing more than one thousand dollars is included on the pre-authorized procedures list, except for the medical care set forth in paragraph (2) of this subdivision. Medical care costing more than one thousand dollars included on the pre-authorized procedures list are pre-authorized so Treating Medical Providers are not required to request prior authorization. (2) The following medical care consistent with the Medical Treatment Guidelines costing more than one thousand dollars is not included on the pre-authorized procedures list set forth in paragraph (1) of this subdivision so that prior authorization is required:

(i) Lumbar fusion as set forth in E.4 of the New York Mid and Low Back Injury Medical Treatment Guidelines;

(ii) Artificial disc replacement as set forth in E.5 of the New York Mid and Low Back Injury Medical Treatment Guidelines, and in E.3 of the New York Neck Injury Medical Treatment Guidelines;

[(iii) Spinal cord stimulators as set forth in E.8 of the New York Mid and Low Back Injury Medical Treatment Guidelines;]

[(iv) [(iv)] Vertebroplasty as set forth in E.6.a.i. of the New York Mid and Low Back Injury Medical Treatment Guidelines;

[(v) [(v)] Kyphoplasty as set forth in E.6.a.i. of the New York Mid and Low Back Injury Medical Treatment Guidelines;

[(vi) [(vi)] Electrical bone stimulation as set forth in the New York Mid and Low Back Injury Medical Treatment Guidelines and the New York Neck Injury Medical Treatment Guidelines;

[(vii) [(vii)] Osteochondral autograft as set forth in D.1.f. and Table 4 of the New York Knee Injury Medical Treatment Guidelines;

(vii) [(viii)] Autologous chondrocyte implantation as set forth in D.1.f., Table 5, and D.1.g. of the New York Knee Injury Medical Treatment Guidelines;

(viii) [(ix)] Meniscal allograft transplantation as set forth in D.6.f., Table 8, and D.7. of the New York Knee Injury Medical Treatment Guidelines; [and]

(ix) [(x)] Knee arthroplasty (total or partial knee joint replacement) as set forth in F.2. and Table 11 of the New York Knee Injury Medical Treatment Guidelines;[.]

(x) *Spinal Cord Pain Stimulators as set forth in G.1 of the Non-Acute Pain Medical Treatment Guidelines; and,*

(xi) *Intrathecal Drug Delivery (Pain Pumps) as set forth in G.2 of the Non-Acute Pain Medical Treatment Guidelines.*

(3) Notwithstanding that a surgical procedure is consistent with the guidelines, a second or subsequent performance of such surgical procedure shall require prior approval if it is repeated because of the failure or incomplete success of the same surgical procedure performed earlier, and if the Medical Treatment Guidelines do not specifically address multiple procedures.

(e) Variances from the Medical Treatment Guidelines are permissible only as provided in section 324.3 of this Part.

(f) Maximum medical improvement shall not preclude the provision of medically necessary care for claimants. Such care shall be medically necessary to maintain function at the maximum medical improvement level or to improve function following an exacerbation of the claimant's condition. Post-maximum medical improvement medical services shall conform to the relevant Medical Treatment Guidelines, except as provided in section 324.3 of this Part.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 324.2(a) and (d).

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

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. Specifically the changes are to: 1) conform section 324.2 subdivision (2) to the Medical Treatment Guidelines requirement that Spinal Cord Pain Stimulators and Intrathecal Drug Delivery (Pain Pumps) have been added to the list of procedures that require pre-authorization; 2) add a clarifying sentence to section F.1.c of the Non-Acute Pain Medical Treatment Guidelines noting that brand-name drugs are generally not recommended.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Business and Local Governments is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. Specifically the changes are to: 1) conform section 324.2 subdivision (2) to the Medical Treatment Guidelines requirement that Spinal Cord Pain Stimulators and Intrathecal Drug Delivery (Pain Pumps) have been added to the list of procedures that require pre-authorization; 2) add a clarifying sentence to section F.1.c of the Non-Acute Pain Medical Treatment Guidelines noting that brand-name drugs are generally not recommended.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. Specifically the changes are to: 1) conform section 324.2 subdivision (2) to the Medical Treatment Guidelines requirement that Spinal Cord Pain Stimulators and Intrathecal Drug Delivery (Pain Pumps) have been added to the list of procedures that require pre-authorization; 2) add a clarifying sentence to section F.1.c of the Non-Acute Pain Medical Treatment Guidelines noting that brand-name drugs are generally not recommended.

Revised Job Impact Statement

A revised Statement in Lieu of Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore

do not change the statement that the rule making will not have an adverse impact on jobs. Specifically the changes are to: 1) conform section 324.2 subdivision (2) to the Medical Treatment Guidelines requirement that Spinal Cord Pain Stimulators and Intrathecal Drug Delivery (Pain Pumps) have been added to the list of procedures that require pre-authorization; 2) add a clarifying sentence to section F.1.c of the Non-Acute Pain Medical Treatment Guidelines noting that brand-name drugs are generally not recommended.

Assessment of Public Comment

The 45-day public comment period with respect to Proposed Rule I.D. No. WCB221400009 commenced on June 4, 2014, and expired on July 21, 2014. The Chair and the Workers' Compensation Board (Board) accepted formal written public comments on the proposed rule through July 25, 2014.

The Chair and Board received thirteen written comments. These comments were reviewed and assessed. The comments are discussed below.

One group of chiropractors commented that the Non-Acute Pain Medical Treatment Guidelines (NAP MTG) only address the issue of delayed recovery for patients with "non-complicated cases." The Board believes that this is an inaccurate reading of the NAP MTG. Specifically, the NAP MTG states that "therapy for non-acute pain can range from single modality approaches for the straightforward patient to comprehensive interdisciplinary care for the more challenging patient." Accordingly, no change has been made in response to this comment.

This group of chiropractors additionally commented that other factors such as disc pathology or disc degeneration should be included under the factor for delayed recovery. In the NAP MTG, delayed recovery specifically addresses the psychosocial factors that come into play when pain and functional impairment persist in spite of the apparent healing of the underlying pathology. It is a component of the biopsychosocial model that is key to the NAP MTG. The factor listed by this group are addressed in other sections under the evaluation and re-evaluation of NAP diagnosis. Accordingly, no change has been made in response to this comment.

The group of chiropractors also suggested that the language regarding self-management of pain be modified. Specifically, they objected to the statement that "non-acute pain must be managed, not cured." This sentence specifically addresses the patient who does not fully recover and would not apply in the situation where a patient fully recovers. As there was extensive discussion and agreement on this language by the Medical Advisory Committee to the Board (MAC), this sentence has not been changed. The issues of reasonable expectations are addressed elsewhere in the NAP MTG as well and do not alter the need for non-acute pain to be managed.

This group of chiropractors also objected to the exclusion of chiropractors from the interdisciplinary teams used in functional restoration programs to assist patients with more complex conditions. This comment was presented and addressed in the Board's preliminary non-formal comment period. Specifically, it is noted that E.4 includes language for "additional professionals as indicated based upon the patient's needs" which would include a chiropractor if indicated by a patient's condition/needs. With respect to the functional restoration program described at C.1.e of the NAP MTG, the Board notes that a physician leads this team because the team leader needs broad expertise to evaluate and develop a treatment plan for all body parts (not just back/neck) and for medication management, areas that are outside of the chiropractor's scope of practice. Accordingly, no changes have been made in response to these comments.

The chiropractic group also commented that chiropractors should be added to H.1.a of the NAP MTG. The Board has not made any change in response to this comment as this section of the NAP MTG: Functional Maintenance Care includes the development and review of a Self-Directed Pain Management Program for the initiation of short-term medication use along with monitoring for adverse effects of the pain medications, which is outside the scope of practice for chiropractors.

Another group of chiropractors suggested changes to the language of Section D to clarify that all parts of the examination are not required for every patient. This section provides an overview and approach that covers all systems. The Board believes that it is clear that all components of the exam are not applicable in every clinical situation. The exam is modified depending upon the injury/condition under evaluation. For example, a straight leg raise would not be expected to be done when evaluating a patient with a shoulder injury. Language in the NAP MTG indicates "exam techniques and tests applicable to the area being examined... a more focused exam may be performed based on clinical circumstances." The intent and language of the section is clear and is consistent with clinical practice. Thus no change has been made.

Both groups of chiropractors objected to the NAP MTG's inclusion of the maximum of 10 maintenance visits per year and to the fact that no variance from the maximum frequency is permitted. The Board responded to this objection in the Assessment of Public Comment to the 2013 MTG

amendments. Ongoing Maintenance Care is a component of Functional Maintenance Care which consists of three parts. It emphasizes a clinically appropriate, independent self-management program. The chiropractic groups suggest that medical providers be able to request a variance following completion of ongoing maintenance care treatment. The Chair, in conjunction with the MAC, determined that when a claimant has reached maximum medical improvement, an ongoing maintenance program that includes patient self-management, periodic therapeutic withdrawal, and a self-directed pain management program is appropriate. Variance requests to allow additional passive therapy are not consistent with this recommendation. Accordingly, no change has been made to the NAP MTG.

A chiropractic group commented that the proposed NAP MTGs do not have treatment options available for the time between when acute-care guidelines cease and the time when a claimant is classified as having reached maximum medical improvement (MMI). This statement is in error. The MAC carefully discussed this and Section E.3 specifically reflects the MAC's approach to the issue raised by referring to either a relevant MTG or standard of care for injuries not covered by an MTG: "The NAP MTG does not contain specific recommendations for other non-pharmacological treatment modalities such as physical medicine modalities or injection therapies. These other treatment options, when clinically indicated, should follow the recommendations in the relevant Medical Treatment Guidelines. When an injury not addressed by an existing Medical Treatment Guideline results in non-acute pain, the standard of care for that injury should be observed." No change has been made to the NAP MTG in response to this comment.

A chiropractic group commented that the term "non-acute pain" is poorly understood in the medical literature and suggests adding a note that "non-acute pain" is often referred to as "chronic pain." The term NAP was carefully considered and selected by the MAC and the Board, the Board has not made this suggested change. Variance requests are based on documentation of specific clinical findings and/or specific criteria. The title NAP does not play a role in the required documentation necessary to support a variance request and has no impact on the approval and/or denial of a request. In the current NAP MTG, the MAC and the Board were cognizant of references to chronic pain and will remain cognizant when updates to the NAP MTG are developed.

The same chiropractic group also had comments regarding profession specific language, requesting that the phrase "spinal manipulation and physical medicine" be changed to "passive therapy and active therapy." This comment was addressed in the Board's 2013 Assessment of Public Comment and in pre-publication comments. The Board notes that the MTG use of the terms PT and OT along with spinal manipulation are not intended to preclude any qualified provider from using active and passive therapies as a component of a qualified course of ongoing maintenance care. As the medical terms used in the MTG were carefully considered and selected by the MAC and the Board, the Board has not made this suggested change.

The Board received several comments from an individual chiropractor who suggested several language and/or phrasing revisions for the Key Concepts of the Diagnosis, Treatment and Management of Non-Acute Pain section. The definition of Non-Acute Pain was carefully considered by the MAC and the Board. Accordingly, no change was made as a result of this comment.

A compensation medical services provider sent in several comments. The first comment was that obtaining the source material for the NAP MTG was costly and could result in providers having conflicting courses of treatment from the different sources. The only document that is necessary is the New York Non-Acute Pain MTG. This document contains all the New York recommendations. The "Sources" section reflects the medical literature used by the MAC in developing the NAP MTG. There is only one document, the NAP MTG itself, which must be utilized. No others MTGs need to be obtained or purchased.

This commenter also noted that the NAP MTG recommendations with respect to TENS Units/Sessions is inconsistent with the recommendations in the previously published Back MTG and that the language "at least one instructional session" is open-ended. The Back MTG was revised for consistency with the TENS recommendations in the Neck MTG. TENS instructional sessions are not open-ended, but rather are limited to a "Maximum Duration: 3 sessions." Accordingly, no change has been made to the NAP MTG.

This commenter suggested that the rules governing use of spinal cord stimulators be modified to clearly indicate that a less invasive functional restoration program be attempted prior to use of a spinal cord stimulator. Whether or not to mandate participation in a Functional Restoration Program as a pre-requisite for Spinal Cord Stimulator implantation was carefully discussed by the MAC. The MAC decided not to make a functional restoration program a prerequisite. The NAP MTG have not been changed in response to this comment.

The commenter also suggested that tobacco use should be part of the evaluation for risk of substance abuse. This comment refers to the ORT tool, which is specifically identified as an instrument for the evaluation of risk of substance abuse, misuse or addiction which has been tested and validated for this purpose. Use of tobacco as an additional risk factor is addressed in the "History Taking" section of the NAP MTG. No change has been made in response to this comment.

The commenter also noted that the assessment section recommends for a medical provider to use an instrument (the PADT) that grades "better, same, worse" in evaluation of the claimant's functional status and that this is not specific enough. Section F.3.a in the NAP MTG states: "patients on chronic opioid therapy need regular monitoring and re-evaluation to measure patient adherence and progress towards treatment goals, with documentation in the medical record at each patient visit. The PADT is provided as an example of a tool for systematically documenting each encounter and assisting in organizing the management and review of care." It is not mandated and was not meant as a tool for evaluating functional improvement or to replace standardized tools that are available for evaluating function. Accordingly, no change has been made to the NAP MTG.

The commenter stated that the facet injection section only includes the maximum number of treatments in the non-acute section. It is noted that D.6.f.i does include the same recommendations for a maximum of three joint levels for acute pain as for non-acute pain.

The commenter asked why smoking cessation was not included as a recommendation prior to lumbar fusion as it is in neck fusion. While it is clear that smoking cessation is generally medically recommended, the MAC and Board's research found that unlike cervical fusion, there is not sufficient medical evidence to currently support a change to this section.

This commenter also suggested that the NAP MTG be modified with respect to bone stimulators. Specifically, the commenter wishes the Board to address non-compliance with manufacturers' recommendations. The NAP MTG addresses clinical criteria and treatment recommendations but are not meant to be compliance criteria for the use of devices. Such criteria will be determined by manufacturers' recommendations for specific brands and professional expertise, not by the NAP MTG. No change has been made in response to this comment.

The commenter also suggested that shoulder replacement be included in the MTG as they are seeing more requests for this treatment. It is noted that hemiarthroplasty is addressed under proximal humeral fractures at D.9.b. Further recommendations may be developed by the MAC and the Board as clinically appropriate when the Shoulder MTG are updated. Variations are available when clinically appropriate.

The commenter noted that the recommendations regarding arthroscopic surgery for treatment of a meniscal tear of the knee does not distinguish between tears due to a traumatic injury and degenerative tears. While this is a valid point, the MTG addresses treatment for workplace injuries and such injuries are generally traumatic in nature. Accordingly, the MTG for treatment of a meniscus tear is for a work-related traumatic injury. Accordingly, no change has been made.

The commenter also stated that following the removal of chondroplasty from the list of pre-authorized procedures, there seems to have been an increase in this procedure without evidence of efficacy. The change referenced by the commenter occurred in a 2013 revision and is not part of the current 2014 update. The Workers' Compensation Reform Task Force Advisory Committee, composed of medical professionals who developed the Knee MTG, recognized that chondroplasty may be a treatment option for certain conditions when criteria are met. With or without inclusion on the Pre-authorization list, chondroplasty requires adherence to the MTG criteria in order for a physician to perform the procedure. Additionally, the WCB has not identified trends towards an increase in this procedure. Therefore, the Board will not make the requested changes at this time.

A pharmacy benefits management company provided several comments. Initially, it stated that it did not appear that the Board and MAC included some of the more current medical evidence in developing the NAP MTG. The Board utilized Colorado's Chronic Pain MTG, effective Feb, 2012 and only utilized the Introduction to California's Chronic Pain MTG, which addressed key concepts but did not address treatment recommendation. The State of Connecticut is listed as one of 60 references in the NAP bibliography, not a source of many citations in the NAP MTG, as stated. Of note, the State of Connecticut's Opioid Medical Protocols were updated and became effective July 2012.

The commenter stated that some of the specific drug recommendations may be outdated by the time the NAP MTG are adopted, offering specific and differing drug regimens than those included in the NAP MTG. As the MAC and the Board carefully considered the medical literature and FDA recommendations in developing the NAP MTG, no changes to these recommendations will be included.

Three commenters expressed concern that while the NAP MTG makes specific recommendations regarding Urine Drug Testing protocols, the medical providers are prohibited from releasing the results of Urine Drug

Tests to carriers and employers. No change has been made in response to these comments. The MAC had extensive discussions regarding all the NAP MTG Urine Drug Testing recommendations. It is noted that medical providers must report non-compliance with prescribed medications in their reports to the carrier and the Board. The Patient Understanding for Opioid Treatment Form, which must be reviewed and signed by the physician and the patient initially and when any change in medical conditions and/or medications occur, contains criteria that reflect compliance. These criteria are surrogates for documenting adherence to or non-compliance with the treatment plan and are mandated components of the ongoing medical record that must be released to the carriers and the Board.

The Board received a lengthy comment from a company that creates Medical Treatment Guidelines for industrial accident boards contending that the Board should have used its offerings instead of the Board's MTG. The Board reviewed many medical treatment guidelines in developing all of its MTG, including this company's offering. In summary, the MAC and the Board ultimately made the determination to create its own MTG. The extensive bibliography lists source material reviewed in the development of the NAP MTG.

The Board received several comments from an insurance carrier. These comments are really questions about specific application of the MTG and will be included in FAQs prior to the effective date of the NAP MTG. In addition, any questions may always be submitted WCBMedicalDirectorsOffice@wcb.ny.gov

The Board received one comment from a claimant expressing concern that she would not receive necessary treatment as a result of the adoption of the NAP MTGs. As the NAP MTGs were specifically developed to ensure that all claimants receive necessary and appropriate treatment, the Board has not made any change in response to this comment.

The Board received a comment from a physician stating that in his professional opinion the Board should not adopt the NAP MTG. The MAC and Board have carefully considered all aspects of the NAP MTG prior to its publication. Accordingly, no change was made as a result of this comment.

CHANGES TO THE REGULATION:

The Regulation that is being adopted contains the following insubstantial changes from the proposed rule published in the June 4, 2014, State Register:

- In section 324.2(d), Intrathecal Drug Delivery (Pain Pumps) has been added to the list of procedures that require pre-authorization to conform this text to the requirements in the NAP MTG themselves and in accordance with other Board announcements on the subject of NAP MTG.

- In section 324.2 (d), Spinal Cord Pain Stimulators have been moved from the list as a procedure in the New York Mid and Low Back Injury Medical Treatment Guidelines requiring pre-authorization to a procedure in the NAP MTG requiring pre-authorization. This conforms section 324.2 (d) to the language in the published text of the NAP MTG and New York Mid and Low Back Injury Medical Treatment Guidelines.

- In section D.11 of the New York Mid and Low Back Injury Medical Treatment Guidelines, section D.12 of the New York Neck Injury Medical Treatment Guidelines, section E.9 of the New York Knee Injury Medical Treatment Guidelines, section E.12 of the New York Shoulder Injury Medical Treatment Guidelines, and section E.4.g of the New York Carpal Tunnel Syndrome Medical Treatment Guidelines, the following sentence is added "Ongoing Maintenance Care is a component of the Functional Maintenance Care recommendations detailed in the New York Non-Acute Pain Medical Treatment Guidelines."

- In section F.1.c of the NAP MTG, this clarifying text has been added "Therefore, brand name medications are generally not recommended except in specific situations with supporting medical documentation."